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OF OHIO LAWS.

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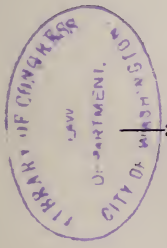
THE

Merchants' Hand-book

—OF—

OHIO LAWS.

BY E. W. GODDARD,
Attorney and Councellor at Law.



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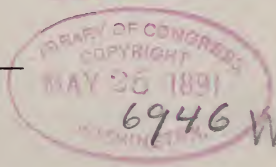

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NOTE.

From the large variety of questions, relating to subjects noted in this little work, asked me, during the past two years, I have been led to attempt to give to merchants and others, at home and abroad, such a compilation of Ohio Laws, and other information, as will best answer many of those questions, and give briefly the desired knowledge of Ohio Laws that business men demand, without having to wade through the ponderous volumes of the Ohio Statutes.

The alphabetical arrangement of the subjects, supplemented with a complete index, will give desired information very quickly to a man whose time is limited. More than a hundred useful subjects are treated upon.

The author would consider it a favor, if the business men consulting this little work, would write out, during the year, such questions as may suggest themselves, and of which business men desire information, and forward them from time to time to him.

Trusting that the business men who refer to this work will find therein information useful to them, this little volume is most respectfully dedicated to the members of The Merchants' and Manufacturers Exchange Company, of Cleveland, Ohio.

E. W. GODDARD.

February, 1891.

Absence, Absconding, Concealment.

When a cause of action accrues against a person, he is out of the State, or has absconded, or concealed himself, the period limited for the commencement of the action will not begin to run until he comes into the State, or while he is so absconded or concealed; and if, after the cause of action accrues, he departs from the State, or absconds or conceals himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought.

Accident, Surprise.

Among the causes for which a new trial may be granted, in the same court, to the aggrieved party, after verdict, or decision of the court, are accident or surprise which ordinary prudence could not have guarded against.

Inevitable accidents for which a person is not responsible arise from some extraordinary interruption of natural laws, producing an event which ordinary prudence could not foresee or avoid, anciently called the act of God. The principle has been applied to accidents arising from foggy weather; an unusual water flood breaking down a well-constructed dam and injuring property below; or delaying or preventing safe transportation by a common carrier. So one who, driving in the highway with due care, runs over a child whom he could not reasonably be expected to see, is not liable.

But the defendant must be free from fault, and the plaintiff must not be chargeable with contributory negligence.

Accommodation Acceptor.

It is common to indorse or draw a bill, or make or indorse a note, merely for the accommodation of a friend, and as a substitute for the loan of money. For instance, A wishes to raise $500, which G is willing to loan him, for two months, if he will procure C and E as sureties. A, in order to do this, gets C to draw an order or bill of exchange on E, in favor of himself (A) or order, payable in two months. A takes this order or bill to E, who accepts it, and A then indorses and delivers the bill to G, who loans the money upon it, knowing that there is, in

fact, no consideration given by A to C, and that E, who accepts the bill, owes C nothing. This is called an accommodation bill. The acceptance of E is called an accommodation acceptance.

Accommodation Indorser.

But suppose A, instead of thus procuring an accommodation bill, goes to C and gets him to make out and sign a note payable to A, or order, in two months, for $500. A and B then indorse the note, by putting their names on the back of it. A then takes this note to G, who lends him the money on it, knowing that there is, in fact, no consideration between the parties for the execution of the note, or for the indorsements. This is an accommodation note, and E is an accommodation indorser. Now, as between all the parties, except A and G, there is no money consideration, but G is an innocent holder, has paid the value of the instrument, and none of the parties can, in such case, set up a defence against him that there was no consideration between them.

In the absence of any agreement to the contrary between accommodation indorsers and drawers of a bill of exchange, at the time it was made, they will not be deemed joint sureties, but separately liable in the order of their becoming parties upon the instrument.

Accommodation Paper.

Bills of exchange are generally presumed to be drawn under the belief that the drawee has money, goods or effects of the drawer in his hands wherewith to pay the debt. Otherwise, and for that reason, the bill is not accepted, no notice to the drawer is necessary.

Accommodation drawers are entitled to notice of non-payment; as likewise accommodation indorsers of bill, bond or note.

Demand and notice may be waived, and in some instances may be excused as not necessary to an indorser who, before the note or bond is due, has informed the holder that the maker has absconded, and requests further time for payment.

And, in general, if an indorser is fully indemnified by mortgage, or otherwise, for the indorsement, the indorsee may maintain an action against him, without proof of demand and notice.

Account Stated.

Means that the parties met and struck a balance. It implies a promise to pay the balance found. In such case the limitation of action thereon is six years from the time the parties met and struck such balance.

Acknowledgment of Service of Process.

An acknowledgment on the back of the summons or petition by the party sued, or the voluntary appearance of a defendant, is equivalent to service.

Parties may also waive process and appear in court.

(See Acknowledgment of Deeds, Wills.)

Actions.

The common law names of actions, such as Assumpsit, Debt, Trover, Covenant, etc., are abolished by the Code, and in their place it is provided that there shall be but one form of action, called a civil action.

The distinction between actions at law and suits in equity, so far as relates either to name or form, has been abolished by the Code, and there has been substituted for them what is called a "civil action," which is synonymous with "suit." The parties are plaintiff and defendant. (See Limitation of Action.)

Administration of Estates.

The Probate Court has exclusive jurisdiction of proof of wills; to grant and revoke letters testamentary and of administration; to direct and control executors and administrators, and to order distribution of estates; to appoint and remove guardians; to grant marriage licences;

to make inquest respecting lunatics and other persons, subject by law to guardianship; to make inquests of compensation in appropriation of land for public purposes; to qualify assignees and appoint trustees and commissioners of insolvent debtors, control their conduct and settle their accounts.

It has also concurrent jurisdiction with the Court of Common Pleas in the sale of lands on petition of executors, administrators and guardians, and the assignment of dower in such cases of sale, and in habeas corpus.

The husband or widow of the deceased, or next of kin, or both, as the court may think fit, are first entitled to letters of administration. If, however, they are incompetent, or unsuitable to the trust, it will be committed to one or more of the principal creditors.

Affidavit.

An order of attachment will be issued when an affidavit is filed in the proper court by the plaintiff, his agent or attorney, showing—

1. The nature of the plaintiff's claim.

2. That it is just.

3. The amount which the affiant believes the plaintiff ought to recover, and

4. The existence of any one of the following grounds:—

1. When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this State; or,

2. Has absconded, with the intent to defraud his creditors; or,

3. Has left the county of his residence, to avoid the service of a summons; or,

4. So conceals himself that a summons cannot be served upon him; or,

5. Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or,

6. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or,

7. Has property, or rights in action which he conceals; or,

8. Has assigned, removed, disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or,

9. Has fraudulently or criminally contracted the debt, or incurred the obligation, for which suit is about to be or has been brought.

But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a non-resident of this State, for any claim other than a debt or demand arising upon contract, judgment or decree, or for causing death by a negligent or wrongful act.

Like affidavit is required in action before a Justice of the Peace, with the additional allegation that the property sought to be attached is not exempt from execution; and, if personal earnings of defendant are sought to be attached, that defendant is not the head or support of a family, or that such earnings are not for services rendered within three months next prior to the action; or, being so earned, amount to more than $150, and that only the excess over that amount is sought to be attached. (See Undertaking.)

Agent, Principal.

One employed by another to represent him or to act for him, is an agent, and the one employing an agent is his principal. A general agent is authorized to transact all his principal's business, or all his business of some particular kind. He is deemed a general agent in that particular business, as where he is entrusted with the possession of goods to be sold for his principal, although his authority is confined to the sale of such goods. So a mercantile broker, though not having possession of his principal's goods, is empowered to make contracts of sale and purchase on his behalf, and is deemed a general agent within the scope of the powers usually conferred upon a mercantile broker.

Verbal authority is sufficient to enable an agent to make contracts in writing binding his principal, except the execution of a deed, or contract under seal, when his power must be likewise under seal.

Authority of an agent may be implied, where the principal has previously sanctioned or acquiesced in like transaction by the agent; and the subsequent ratification of acts of a third person or agent, by the principal, will confirm and establish the authority of the agent.

A principal always possesses the power of revocation of the authority given to his agent, unless it is coupled with an interest, or given for a valuable consideration. Death of the principal operates as a revocation of an agency.

Agreement.

To maintain an action upon any special promise to pay the debt, or be responsible for another, or to charge an executor or administrator to answer out of his own estate, or to charge any person upon any agreement in consideration of marriage, or upon any contract of sale of lands, or any interest in the same, or upon any agreement not to be performed within the space of one year from the making thereof, —the agreement, or some note or memorandum thereof, must be in writing, and signed by the party to be charged therewith, or by some

other person thereunto by him or her lawfully authorized.

All agreements, promises, notes, bonds, contracts, mortgages or other securities, the consideration of which, in whole or in part, is for money, or other valuable thing, won or lost, laid, staked or betted at any game, under any name whatsoever, or upon any horse race, or cock fight, or for money lent for the purposes of such game, are absolutely void and of no effect. (See Contracts.)

Appeals.

From Justice's court to be fixed at not exceeding ten days when judgment for defendant in case when property is attached. Bond, double amount of value of the property attached. Not allowed in following cases:—

1. On judgment rendered on confession.

2. In jury trials when neither party claims in his bill of particulars a sum exceeding twenty dollars.

3. In the action for the forcible entry and detention, or forcible detention of real property. In trials of the right of property under the statutes, either levied upon by execution or attached.

In all cases not otherwise specially provided by law, either party may appeal from Justice's Court to Common Pleas.

From Common Pleas to Circuit Court, may be taken by parties affected by judgment or final order in a civil action rendered in Common Pleas Court, of which it had original jurisdiction, if right to demand a jury did not exist, and from an interlocutory order dissolving an injunction.

Appearance to the Action.

An acknowledgment on the back of the summons or petition, or the voluntary appearance of the defendant is equivalent to service.

When parties agree to enter, without process, before a justice of the peace, any action of which such justice has cognizance, he shall enter the same on his docket, and proceed to trial, judgment and execution, as if summons had been served.

Voluntary appearance before is equivalent to service. And if return of summons fails to show legal service, filing a set-off, motion or demurrer constitutes a voluntary appearance.

Arrest on Civil Process before Judgment.

A defendant in a civil action can be arrested before judgment, in the manner prescribed by law only. The requirements of an affidavit for an arrest before judgment are the same as for an attachment. (See Affidavit.)

The same in an action before a justice of the peace. (See Affidavit.)

Arrest on Civil Process after Judgment.

An execution against the person of the debtor may be issued upon any judgment for the payment of money, upon like affidavit as for an attachment, with the additional allegation that the judgment was not rendered on any gaming consideration, and that defendant has not been discharged as an insolvent debtor.

For arrest on judgment of a justice of the peace, like affidavit required. (See Affidavit.)

Assignment of a Claim.

Where mutual claims exist between parties, or such as could be availed of in counter claim or set-off, neither can be deprived of the benefit thereof by assignment of the other, but the two demands must be deemed compensated, so far as they equal each other.

Assignment for Benefit of Creditor.

The probate court has exclusive jurisdiction to qualify assignees of insolvent debtors, control their conduct and settle their accounts. Assignee in voluntary assignments to give bond in amount, and with sureties, approved by the court. Assignment to take effect from the time of delivery to the probate judge. Assignee failing to give bond may be removed and a trustee appointed. Additional trustee may be appointed on application of a majority of the creditors in amount. Creditors

may elect a trustee, or trustees, notice being given of time and place, and represented by fifty per cent. of the debts, a majority in value so represented being necessary to a choice. Trustees to give like bond as assignees. On resignation or removal of an assignee or trustee he must forthwith file and settle his account, and pay over money, and deliver to his successor all effects of the trust, and convey title to any real estate embraced therein.

Assignments with intent to prefer, in contemplation of insolvency, inure to the general creditors.

Claims preferred by law are, taxes assessed upon personal property assessed prior to assignment, wages due an operative in service of an assignee for labor performed within twelve months preceding, not exceeding three hundred dollars. Such assignment not construed to cover property exempt by law from levy and sale on execution, unless such exemption is expressly waived, nor property belonging to the wife, or the homestead exemption, and exempt personalty that has to be selected by husband and wife.

Attachment.

Proceedings in attachment are mere collateral incidents to a common action to seize the debtor's goods and chattels, and to subject debts due him to satisfy a judgment afterwards to be rendered.

When plaintiff entitled to an order of attachment. (See Affidavit).

Attested Account.

See Lien paragraph. "Lien of sub-contractor upon payments due head contractor, how obtained, etc."

Bail.

Defendant in a civil action may, on arrest, give bail by executing an undertaking to the plaintiff, with sufficient sureties, in presence of the sheriff, conditioned to render himself amenable to the process of the court thereon. Persons confined or detained on criminal charge, which is bailable, may, in the discretion of the court, be admitted to bail during pendency of proceedings in habeas corpus. Also in like manner in charges of contempt of court, and in bastardy proceedings. Defendant under arrest in a civil action may be discharged by deposit of money to the amount named in the order of arrest.

Bill of Costs.

An itemized bill of costs is required to be filed by the clerk of the court on rendition of judgment, and he shall not receive for himself or any other officer any costs unless such itemized bill has been so filed. Persons liable to pay costs to any officer, may demand, and it is the duty of

such officer, without charge, to make out, sign and deliver to such person an itemized bill thereof; and no person is compelled, after such demand, to pay such costs, until an itemized bill is so made and delivered, with a receipt for the fees and costs paid.

Bill of Sale.

As against third persons or attaching creditors, a mere bill of sale unaccompanied by an absolute delivery of the possession of the goods, is void. (See Chattel Mortgage.)

Bills and Notes.

Indorser or holder, to whom any note, bond or bill of exchange, or check, is made payable by such indorsement or delivery, may sue in his own name, the maker, drawer, or obligee, and after due diligence, against the indorser also.

If so indorsed or delivered after due, it is open to any defense that might have been made if the action had been between the original parties.

Also, if any such note, bill, or check, be indorsed or delivered on or before the day on which the same is made payable, and the indorser institute action thereon, defendant may prove payment of any money thereon before the same was so indorsed or delivered, on proving that plaintiff had notice of such payment before such indorsement or delivery.

All such notes, bonds, bills and checks, payable

at a day certain after date or sight, are entitled to three days' grace, except, however, that all checks, bills of exchange, or drafts, appearing on their face to have been drawn on any bank, and payable on a specific day, or in any number of days after the day of sight or date thereof, which are deemed payable without grace. And in such case protest and notice is not necessary.

In cases where protest and notice is necessary, if the third day of grace fall on the first day of the week, the demand must be made on the next preceding business day.

The following days, namely, the first day of January, the fourth day of July, the twenty-fifth day of December, the twenty-second day of February, the thirtieth day of May, and any day appointed and recommended by the governor of the state or the president of the United States as a day of fast or thanksgiving, shall, for all purposes whatsoever of presentment for payment or acceptance and the protesting or the giving of notice of non-acceptance or of non-payment of all such instruments, be considered as the first day of the week; but if the first day of January, the fourth day of July, the twenty-fifth day of December. or the twenty-second day of February, or the thirtieth day of May, be the first day of the week, the succeeding Monday shall for the same purpose be considered as the first day of the week.

A promissory note or other negotiable instrument, given in whole or in part for any patent invention, or an invention claimed to be patented, must have the words "given for a patent right," prominently and legibly written across the face thereof, above the signature. Such instrument in the hands of the holder, will be subject to the same defense as it would be in the hands of the original owner or holder

Bond.

On appeal from justice of the peace, to be given within ten days to adverse party, with sufficient surety, in double the amount of judgment and costs, conditioned to prosecute without delay, and to satisfy the judgment if obtained.

On order or decree from Probate court, appeal bond to be filed within twenty days, surety to be approved by Probate judge—conditioned to abide the order or decree of Appelate court—when decision directs the payment of money, undertaking to be in double the amount, otherwise in the discretion of said court. Bond not required of party acting in a fiduciary character who has given bond for the faithful discharge of his duties, and appeals in the interest of the trust.

On appeal from Common Pleas court to Circuit court, bond or undertaking to be given within thirty days from the rising of the court, surety to be approved by the clerk or judge, in double

amount of judgment if for money; in other cases the court to fix the amount. (See Attachment). (Undertaking).

Book Account.

If, in an action, the claim or defense is founded on a book account, a party may testify that the book is his account book; that it is a book of original entries; that the entries therein were made by himself, or a person since deceased, or a disinterested person, non-resident of the county. Whereupon the book shall be competent evidence and such book may be admitted in evidence in any case, without regard to the parties, upon like proof by any competent witness.

Burden of Proof.

A party asserting a claim takes upon himself the burden of proving affirmatively the facts necessary so establish it; and particularly where the facts are within his knowledge. When the basis upon which a party claims involves a negative assertion, he is bound to prove a negative. As where a failure of consideration is alleged in an action to recover back money paid, the party making such claim must prove the material facts to exist, even though they involve a negative.

Care.

Ordinary care or diligence is that degree of care and diligence which men of common prud-

ence are accustomed to use and employ, under the same or similar circumstances, or in order to bring that in which they are engaged to a safe and successful termination, having due regard to the rights of others and the objects sought to be accomplished. Conditions of great peril require greater care than that less perilous. The amount of care increases but the standard remains the same. Ordinary care, in different situations and dangers, requires different degrees of watchfulness and diligence; so that what would be reasonable care under one condition of circumstances, would not be so under another.

Carriers of Goods.

Not every person who undertakes to carry goods for hire is deemed a common carrier. One who occasionally carries goods for hire, will not be deemed a common carrier, and in the absence of assuming greater risks by contract will be responsible only for ordinary care and diligence. Hucksters and others making regular trips to town, and applying to dealers and others for return freight are not common carriers of goods; such cases must be treated as special and individual transactions.

A common carrier of goods is one who exercises it as a public employment, undertaking to carry goods for persons generally, and holding himself out as engaging in the carrying of goods for hire

and as a business, and not as an accidental occupation upon one or more occasions.

Those who engage to carry goods for hire as a common employment from place to place, or from one part of a town to another; express companies, masters of steamboats, river boats, canal boats, and others engaged in the transportation of goods generally for hire, and a ferryman occupying a position in a line of travel, and holding himself out for general employment, come within the description of, and are liable as, common carriers.

Choses in Action.

A claim or right to a sum of money, for which an action may be brought, is a chose, or thing, in action; and this chose in action may be a bond, account, or in fact any demand arising on contract, whether payable immediately, or due at a future time, whether in or out of suit.

The assignee of any chose in action, whether bill of exchange, promissory notes, and bonds, payable to order, bearer, or assigns, account, or demand for a sum of money arising on contract, may sue therefor in his own name. No particular form of transfer is required. The mere delivery of a bond, covenant, note, account, or other claim, for a valuable consideration, is a valid assignment, if such delivery was intended by the parties as a transfer. Likewise a judgment may

be assigned for a valuable consideration, either verbally or by writing; but it is safer to have it in writing.

Claimant of Property Taken on Execution.

If property is levied on by execution and claimed by other person than the defendant, the officer is required forthwith to give notice in writing to a justice of the peace, setting forth the names of the plaintiff and defendant, and the name of the claimant, and furnish the justice with a schedule of the property claimed. Thereupon the justice issues summons for five disinterested men, electors, to appear before him at a time and place named, to try and determine the claimant's right. Claimant to notify the party in interest in the execution. Jury sworn to render a true verdict according to the evidence. If the jury find the right to the goods and chattels in the claimant, to find the value thereof also, and the justice shall render judgment upon such finding for the claimant, and for his costs against the plaintiff in the execution, or other party for whose benefit it was issued, and also that he have restitution of the goods and chattels. If the jury find for the other party, costs and execution shall be awarded against the claimant. If the jury fail to agree, and be discharged, costs shall be taxed, to abide the event of a trial before another jury to be summoned in like manner. If jury find for the

claimant, the plaintiff in the execution may tender to the officer an undertaking in double the amount of the value of the property assessed by the jury, with good and sufficient sureties, payable to claimant, to the effect that they will pay all damages sustained by reason of detention or sale of the property, and the officer shall deliver the same to the claimant, and proceed to sell the property, and shall not be liable to the claimant therefor.

Cognovit, or Judgment Note,

Has no advantage over an ordinary promissory note unless for a sum exceeding one hundred dollars, as they can only be entered up in a Court of Record. Justice courts are not Courts of Record. In Court of Common Pleas such notes can be entered up by attorneys without summons issuing to defendant; the power of attorney in the note authorizing any attorney to confess judgment on the note according to its terms. (See Confession of Judgment.)

Collateral Security.

A real estate mortgage is regarded as mere collateral security for the performance of the condition of the mortgage; and where that condition is the payment of a debt, the security is regarded as an incident to the debt, so that the legal transfer of the debt, whether a note or bond, or negoti-

able or not, passes the mortgage security to the assignee of the debt, note, or bond.

If several promissory notes are jointly secured by mortgage, the assignee of one becomes equitably entitled to a pro-rata participation in the benefit of the security, when all the notes stand upon the same footing as to the time when due, unless the agreement of the parties to the assignment be otherwise.

Different notes or debts secured by the same mortgage must be paid from the mortgage fund, in the order in which they fall due, although the fund may not be sufficient to pay all in full.

Composition With Creditors.

The payment of a less sum than is due before a debt is due; or the payment of a less sum at another place than is stipulated, in satisfaction of the whole debt; or the acceptance of security for a part of the debt, in consideration of which the creditor agrees to lose the balance; or an agreement to receive a part of the debt in money and the residue in specific articles—in all such cases the creditor derives a benefit from the arrangement, and there is therefore a sufficient consideration. Where a specific sum is due, an agreement to receive, and the acceptance of a less sum afterwards in discharge of the whole, is not, in general, a satisfaction of the whole, unless a release, under seal, is executed, or there is some considera-

tion for the relinquishment of the residue, or the part relinquished is merely interest on the debt. The delivery of property, however, in satisfaction of a debt, although of less value than the amount of the debt, will operate as a complete satisfaction.

And where several creditors, with the knowledge of each other, agree, on the faith of each other's undertaking, to give time to, or accept a composition or per cent. from the debtor in discharge of his debts, the agreement will be binding on all the creditors who are parties to it.

Compound Interest.

Where there is a settlement of accounts between parties, after interest has become due, and the interest is charged in settlement, interest may be allowed upon the balance found due by the settlement. So, an agreement after interest is due, to turn it into principle, is valid. But in the absence of such settlement, and in computing interest on demands, it is not allowable to make annual rests, and having found the balance (including interest) then due, to carry the same as principle into subsequent statements, and interest thereon to the party in whose favor such balance is found. Where there is a contract between the parties for the payment of interest annually, if it be not paid, simple interest may be allowed upon the interest from the time it became due; but the

interest upon interest can not be made to bear interest.

Computation of Interest.

The parties to a bond, bill, promissory note, or other instrument in writing for the forbearance or payment of money at any future time, may stipulate therein for the payment of interest upon the amount thereof at any rate not exceeding eight per centum per annum, payable annually.

Upon all judgments, decrees, or orders, rendered upon any bond, bill, note, or other instrument of writing containing stipulations for the payment of interest in accordance with the above provision, interest will be computed till payment at the rate specified in the instrument.

In all other cases, when money becomes due and payable upon any bond, bill, note, or other instrument in writing hereafter made, upon any book account, or settlement hereafter made between the parties, upon all verbal contracts hereafter entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of any contract hereafter made, or any other transaction which hereafter occurs, the creditor shall be entitled to interest at the rate of six per cent. per annum, and no more.

The rate of interest on existing obligation is not affected by the foregoing provision, but all

creditors are entitled to collect and receive interest on all bonds, bills, notes, and other written instruments heretofore entered into, upon all balances struck on settlements heretofore made, upon book accounts heretofore accrued, upon all verbal contracts heretofore made and upon all judgments, decrees, and orders of accounts heretofore rendered.

The taking of usurious interest, or contracting therefor, does not make void the contract, except as to the excess of interest over the legal rate; and judgment will be rendered for no more than the balance found due, after deducting the excess of interest so paid.

The rule for the computation of interest is as follows: A partial payment exceeding the interest due, is to be applied first to pay the interest and balance on principal; if less than the interest, it goes on the interest. On a note payable on or before a certain day, with interest from date, if, before maturity, partial payments are made, they will be applied first to discharge the interest accrued, and the balance, if any, to a reduction of the principal. When interest is payable annually, or at stated periods, each installment of interest past due bears simple interest till paid, and payments are to be applied, first, in satisfaction of interest due upon interest; secondly, in satisfaction of interest accrued upon principal; and,

thirdly, in satisfaction of principal; but in no case will interest upon interest be made to bear interest.

No device is allowed to cover illegal interest, such as including land, or other property in the transaction at double price.

Computation of Time.

Unless otherwise specially provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be Sunday it shall be excluded. When a contract is silent as to the time of performance, the law infers an engagement that it shall be executed within a reasonable time. What is a reasonable time is sometimes a question of law, and must often be determined by view of all the circumstances of the case, the subject matter, and the custom of the place, or trade.

Months mentioned in a statute are understood to be calendar months, and not lunar months, of four weeks; as when a note is payable one or more months after date, calendar months are supposed to be intended.

The law does not take notice of the fractions of a day. So the court held, in case of a life policy for one year dated September 3, and the insured died Sept. 3, the following year, that the year did not expire until the last day was fully expired.

Conditional Sales.

Personal property sold, to be paid for in whole or in part in installments, or leased, rented, hired or delivered on condition that the same shall belong to the person purchasing, leasing, renting, hiring, or receiving the same whenever the amount paid shall be a certain sum, or the value of such property, the title to the same to remain in the vendor, lessor, renter, hirer or deliverer of the same, until such sum or the value of such property or any part thereof shall have been paid, —such condition, in regard to the title, will be void as to subsequent purchasers and mortgagees in good faith, and creditors, unless such condition shall be evidenced by writing, signed by such purchaser, etc., and also a statement thereon, under oath, made by the person so selling, etc., of the amount of the claim, and a copy thereof deposited with the clerk of the township where the person signing resides, or with the county recorder.

Property so sold, leased, etc., the vendor can not take possession of without tendering or refunding to the purchaser, etc., the sum of money so paid after deducting a reasonable compensation for the use of such property, not exceeding fifty per cent. of the amount so paid, notwithstanding anything in the contract to the contrary, unless the property has been broken or actually

damaged, then a reasonable compensation for such breakage or damage shall be allowed.

A violation of the foregoing provision is deemed a misdemeanor, and the penalty is any sum not more than $100.00.

The sale, secretion, or removal of property so conditionally purchased, with intent to defraud, is deemed a misdemeanor, the penalty of which is a fine of not more than $500.00, or imprisonment not more than three months, or both.

Confession of Judgment.

A person indebted, or against whom a cause of action exists, may personally appear, in a court of competent jurisdiction, and, with the assent of the creditor, or person having such cause of action, confess judgment; whereupon judgment shall be entered accordingly. The debt or cause of action must be briefly stated in the judgment, or in a writing to be filed as pleadings as in other actions; and such judgment authorizes the same proceedings for its enforcement as judgments rendered in actions regularly brought and prosecuted; and the confession will operate as a release of errors.

An attorney who confesses judgment in any case must, at the time of making such confession, produce the warrant of attorney for making the same to the court before which he makes the confession; and the original or a copy of the warrant must be filed with the clerk of such court.

A warrant of attorney executed by a person in custody, to confess judgment in favor of the person at whose suit he is in custody, will be of no force unless executed in presence of an attorney expressly named by the person in custody, and signed by him as a witness. An attorney cannot confess judgment for his client before a justice of the peace.

Consideration.

Consideration of marriage must be in writing. A contract in order to be binding, must be made upon a good and sufficient consideration, which is the price, motive, or inducement to make the promise upon which suit is brought. Agreements to pay, or do a thing, on one side, without any considerations on the other side, are wholly void in law. It is *nudam pactum*—a naked promise. Any consideration, however small, is sufficient to prevent the agreement from being void for want of consideration. So when there is a consideration, not illegal, its actual value or amount will not, in general, be disturbed, for any man having a legal capacity to contract, is presumed to be a suitable judge of the value he may choose to set upon either his property, labor, or purchase.

When there are promises on both sides, the promise on one is a good consideration for the promise on the other.

As the object of the law is to repress vice and

immorality and promote the welfare of society, all promises which originate in a breach or violation of its principles and enactments, are void.

Consignment.

(See Carriers of Goods. Warehousemen.)

Consignor and Consignee.

(Embezzlement by carriers, warehousemen, commission merchants, etc.; embezzlement by consignors). A carrier, warehouseman, factor, storage, forwarding or commission merchant, or manufacturer, or his clerk, agent, or employee, who, with intent to defraud, sells, or in any way disposes of, or applys or converts to his own use any bill of lading, custom house permit, or warehouse-keeper's receipt, intrusted to or possessed by him, or any property intrusted or consigned to him, or the proceeds of profits of any such sale of property, or fails to pay over such proceeds, deducting charges and usual or agreed commission, or the product of any property delivered to him to be manufactured, after deducting any compensation to which he may be entitled as commission for the manufacture; and a consignor of any property, or his agent, not being absolute owners thereof, and not having authority to stop, countermand, or change the consignment thereof, or to sell or encumber the same during transit, who, with intent to defraud, after the delivery thereof

for transportation on any water craft or vehicle, in any way stops, countermands, or changes the consignment thereof, or sells, disposes of, or encumbers such property, or in any way converts the same to his own use, shall be imprisoned in the penitentiary not more than four years or less than one year.

Constructive Notice.

A party to a transaction is presumed to know, and therefore is said to have constructive notice of, everything which a person of common prudence and caution would have inquired into, and known, had he been surrounded by the same suspicious circumstances.

Continuance.

In an action by attachment on a claim before it becomes due, judgment will not be rendered until due, to which time the case will be continued. Continuance of cases are generally within judicial discretion. In Justice courts when summons cannot be served within the county, the justice of the peace is authorized to continue the case not less than forty, nor more than sixty days, for publication of notice.

A justice of the peace may, when defendant is a non-resident, on his own motion, continue an action not exceeding forty-eight hours, if he is engaged, or a jury is required; and when the de-

fendant is a resident, and a jury be required, or he be engaged, the justice cannot continue the case on his own instance, beyond the period of eight days.

The justice may continue on application of either party, making affidavit of want of material testimony, not exceeding thirty days. And also a like continuance for a perio(longer than thirty days, but not exceeding ninety days, on application of either party, making affidavit of want of material evidence, setting forth what the evidence is, that there has been no negligence on his part, and that he expects to obtain the evidence by the time stated by him.

Contract.

A contract is an agreemen between two or more persons, upon sufficient consideration, to do or not to do, a particular thing. In its legal sense the word "contract" includes every description of agreement or obligation, whether written or verbal, whereby one party becomes bound to another to do, or omit to do, a certain act. If under seal, it is called a specialty, or deed; if not under seal, an agreement by parol. All agreements, whether written or verbal, if not under seal, are called "parol" agreements.

A contract performed, so that there is nothing more to be done under it, is called an executed contract; but if nothing has been done under it,

it is called an executory contract; and if in part performed and in part not, it is then a contract partly executed, and in part executory.

When the terms of a contract are openly stated, or put in writing, and signed by the parties, it is called an express contract; as, to deliver a stated quantity of anything, or to pay a stated price for certain goods, or the like.

An implied contract is where justice and honesty require payment for some value or service rendered, although nothing but the value and service be proved; as if a man works for another, the law implies a promise to pay him what he deserves for his labor.

To be binding, every contract must be made between parties having sufficient age and understanding, and the exercise of their free will at the time of making it. (See Consideration).

Conveyance.

Deeds, mortgages, and other instruments, for the conveyance of any land, tenement, or hereditament, must be signed by the grantor or grantors, maker or makers, in the presence of two witnesses, who must attest such signing, and subscribe their names to such attestation; and such signing must also be acknowledged by such grantor or grantors, maker or makers, before a judge of a court of record, or a clerk thereof, a county surveyor a justice of the peace, notary public, mayor, or

other presiding officer of a municipal corporation, who must certify such acknowledgment on the same sheet on which such deed, mortgage, or other instrument of writing may be printed or written, and must subscribe his name to such certificate. All powers of attorney to sell, convey, or mortgage any real estate, must in like manner be signe attested, acknowledged, and certified, as in case of deeds, etc.

Deeds, mortgages, powers of attorney, and other instruments of writing, for the conveyance of land, etc., situated in this state, executed in any other state, territory, or country, in conformity with the laws of such state, or in conformity with the laws of this state, will be as valid as if executed within this state, in conformity to law. Acknowledgment may also be made before a U. S. consul resident abroad, or a commissioner appointed by the governor of this state.

A power of attorney authorizing the execution of any deed, etc., must be recorded, previous to such deed of conveyance so authorized, in the office of the county recorder in which such lands, etc., are situated.

Mortgages will take effect from the time of record; and if two or more mortgages are presented for record on the same day, they take effect from the order of their presentation for record; the first presented must be first recorded, and the first recorded will have preference.

Deeds, etc., must be recorded within six months from the date thereof; if not so recorded, the same will be deemed fraudulent, so far as relates to any subsequent bona fide purchaser having, at the time of making the purchase, no knowledge of such former deed, etc.

Commercial Paper.

By commercial paper, is meant bills of exchange, promissory notes, and bonds for the payment of a sum of money certain, unconditionally, and to a third person, or order, or bearer, or assigns. The person who makes the order is the drawer; the one upon whom it is drawn is the drawee; and the person to whom the money is directed to be paid is the payee. If the drawee accepts the bill, he is the acceptor. (See Bills and Notes).

Corporations.

Corporations may be formed in the manner provided by statute for any purpose for which individuals may lawfully associate themselves; and if the organization is for profit, it must have a capital stock.

Any number of persons, not less than five, a majority of whom are citizens of this state, desiring to be incorporated, shall subscribe and acknowledge, before any officer authorized to take acknowledgment of deeds, articles of incorpora-

tion, the form of which shall be prescribed by the secretary of state, which must contain: First. The name of the corporation, which shall begin with the word "The" and end with the word "Company," unless the organization is not for profit. Second. The place where it is to be located, or where its principal business is to be transacted. Third. The purpose for which it is formed. Fourth. The amount of its capital stock, if it is to have capital stock, and the number of shares into which the stock is divided. The articles must be filed in the office of the secretary of state; whereupon the persons who subscribed the same, their associates, successors and assigns, by the name and style provided therein, are deemed a body corporate, with succession, and power to sue and be sued, contract and be contracted with, acquire and convey real and personal estate necesssary to effect the objects of the incorporation, to make and use a common seal, and do all needful acts to carry into effect the objects for which it was created.

Stockholders are liable, in addition to their stock, in an amount equal to the stock by them subscribed, or otherwise acquired, to the creditors of the corporation, to secure the payment of the debts and liabilities of the corporation.

Fees for Incorporating Are,

For corporations not for profit, $2.00. Corporations for profit, where capital stock is for $10,000, or under, $10.00; over $10,000, one-tenth of one per cent. For increase of capital stock, where increase is $10,000, or under, $10.00; over $10,000, one-tenth of one per cent. Number of directors or trustees not to be less than five.

Courts.

Justices of the peace have general jurisdiction within their respective townships and counties, and exclusive original jurisdiction in their township of any sum not exceeding $100.00, and concurrent jurisdiction with the Court of Common Pleas in any sum over $100.00 and not exceeding $300.00.

Judgment may be confessed before a justice of the peace for a sum not exceeding $300.00. But a justice of the peace has not cognizance of action to recover damages for assault, malicious prosecution, misconduct in office, slander, on contracts for real estate, or in which title to real estate is involved. In all cases not otherwise specially provided for by law, either party may appeal to the Court of Common Pleas.

The Court of Common Pleas has original jurisdiction in all civil cases where the sum exceeds the exclusive jurisdiction of a justice of the peace, and general appelate jurisdiction from all infer-

ior courts of the proper county. An appeal lies to the Circuit court if the right to a jury did not exist, and from interlocutory orders; and error lies from the Circuit court to the Supreme court.

Costs.

Where a justice of the peace has jurisdiction of an action, and the same is brought in any other court, and the judgment is less than one hundred dollars, unless the recovery has been reduced below that sum by counter claim or set-off, each party shall pay his own costs; and in all actions for libel, slander, malicious prosecution, assault and battery, false imprisonment, criminal conversation or seduction, actions for nuisance, or against a justice of the peace for misconduct in office, when the damage assessed is under five dollars, the plaintiff shall not recover costs.

When it is not otherwise provided by statute, costs shall be allowed, of course, to the plaintiff, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property; and to the defendant in like manner upon a judgment in his favor. (See Bills of Costs).

Date.

All written instruments should be dated, and especially commercial paper; but if bills of exchange, notes, and bonds have no date, or an im-

possible date, upon proof of the time they issued or were made, they will be construed the same as if they were dated at that time. And a bill, note, bond, or other contract, is good and valid, though made on Sunday. (See Bills and Notes. Commercial Paper).

Days of Grace.

The rule is, that in order to charge the parties collaterally liable on a bill, bond, or note, presentment for payment must be made on the exact day the instrument, according to its tenor, becomes payable, after allowing the days of grace, which are three, except on sight drafts, if payable at a fixed time (a day before or a day after will not suffice), and within a reasonable time, in case the instrument is payable on demand. (See Bills and Notes).

Demand.

(See Days of Grace. Bills and Notes).

Depositions.

A deposition is a written declaration under oath, made upon notice to the adverse party. A deposition may be used: First.—When the witness does not reside in, or is absent from, the county where the action is pending. Second.—When the witness is dead, or, from age, infirmity, or imprisonment, is unable to attend court. Third.—When

the testimony is required upon a motion; oral examination of the witness is not required. Judges and clerks of the Supreme, Circuit and Common Pleas courts, probate judge, justices of the peace, notary public, mayor, master commissioner, official stenographer of any Court of record, or any person empowered by a special commission, may take depositions. They may be taken out of the state before a judge, justice, or chancellor of any Court of record, a justice of the peace, notary public, mayor, or chief magistrate of any municipal corporation, a commissioner appointed by the governor of this state to take depositions, or any person authorized by a special commission from this state. A relative or attorney of either party, or one interested in the event of the action, cannot take a deposition.

Descent and Distribution.

When a person dies intestate, having title or right to any real estate or inheritance in this state, which came to such intestate by descent, devise, or deed of gift from an ancestor, such estate descends and passes in parcenary to his or her kindred in the following course: First.—To the children of such intestate, or their legal representatives. Second.—If there are no children or their legal representatives living, the estate passes to and vests in the husband or wife, relict of such intestate during his or her natural

life. Third.—If such intestate leave no husband or wife, relict of himself or herself, or at the death of such relict, the estate passes to and vests in the brothers and sisters of the intestate who are of the blood of the ancestor from whom the estate came, or their legal representatives, whether such brother and sisters be of the whole or half blood of the intestate. Fourth.—If there are no brothers or sisters of the intestate of the blood of the ancestor from whom the estate came, or their legal representatives, and the estate came by deed of gift from an ancestor who is living, the estate shall ascend to such ancestor. Fifth.—If the ancestor from whom the estate came is deceased, the estate shall pass to and vest in the children of such ancestor, or their legal representatives; if there are no children of the ancestor from whom the estate came, or their legal representatives, the estate shall pass to and vest in the husband or wife, relict of such ancestor, if a parent of the decedent, during the life of such relict; and on the death of such husband or wife, or if there is no such husband or wife, the estate shall pass to and vest in the brothers and sisters of such ancestors, or their legal representatives; and for want of such brothers and sisters, or their legal representatives, to the brothers and sisters of the half blood of the intestate, or their legal representatives, though such brothers and sisters are not of the blood of the ancestor from whom the

estate came. Sixth.—If there be no such half brothers and sisters of the intestate, or their legal representatives, the estate shall pass to the next of kin to the intestate of the blood of the ancestor from whom the estate came, or their legal representatives.

If the estate came not by descent, devise, or deed of gift, it shall descend and pass as follows: First.—To the children of the intestate and their legal representatives. Second.—If there are no children or their legal representatives, the estate shall pass to and be vested in the husband or wife, relict of such intestate. Third.—If such intestate leaves no husband or wife, relict of himself or herself, the estate shall pass to the brothers and sisters of the intestate of the whole blood, and their legal representatives. Fourth.—If there are no brothers or sisters of the intestate of the whole blood, or their legal representatives, the estate shall pass to the brothers and sisters of the half blood, and their legal representatives. Fifth.—If there are no brothers or sisters of the intestate of the half blood, or their legal representatives, the estate shall ascend to the father; if the father is dead, then to the mother. Sixth—.If the father and mother are dead, then the estate shall pass to the next of kin, and their legal representatives, to and of the blood of the intestate.

When a person dies intestate and leaves any

personal property, the same shall be distributed in the manner prescribed as to real property which came not by descent, devise, or deed of gift from any ancestor; saving, however, such right as any widow or widower may have to any portion of such personal property. If there be no person living to inherit the same, such personal property shall pass to and be vested in the state.

When a person dies intestate and leaves no children, or their legal representatives, the widow or widower shall be entitled, as next of kin, to all the personal property which is subject to the distribution upon settlement of the estate; but if the intestate leaves any children, or their legal representatives, the widow or widower shall be entitled to one-half of the first four hundred dollars and to one-third of the remainder of the personal property subject to distribution.

Divorce.

Courts of Common Pleas may grant divorces for the following causes: First.—That either party had a husband or wife living at the time of the marriage from which the divorce is sought. Second.—Willful absence of either party from the other for three years. Third.—Adultery. Fourth.—Impotency. Fifth.—Extreme cruelty. Sixth.—Fraudulent contract. Seventh.—Any gross neglect of duty. Eighth.—Habitual drunkenness for three years. Ninth.—The imprison-

ment of either party in a penitentiary under sentence thereto; but the petition for divorce under this clause shall be filed during the imprisonment of the adverse party. Tenth.—The procurement of a divorce, without this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while the same remain binding on the other party.

The plaintiff, except in an action for alimony alone, shall have been a resident of the state at least one year before filing the petition; all actions for divorce, or alimony, shall be brought in the county where the plaintiff has a bona fide residence at the time of filing the petition, or in the county where the cause of action arose; and the court shall hear and determine the same, whether the marriage took place, or the cause of divorce occurred, within or without this state.

When a wife files her petition for a divorce, or for alimony, the evidence of her husband shall not be so construed as to preclude her from the provision of the statute.

When the defendant is a resident of the state, summons and copy of the petition must be served on the defendant, by the sheriff of the county in which he or she resides, or is found, at least six weeks before the hearing of the case. When the defendant is not a resident of the state, or his

residence is not known, notice of the pendency of the action must be given by publication, as in other cases; and unless it is made to appear to the court, by affidavit or otherwise, that his residence is unknown to the plaintiff, a summons, and a copy of the petition, shall forthwith, on the filing of the petition, be deposited in the post-office, directed to the defendant at his place of residence.

Dormant Judgment.

If execution on a judgment rendered in any court of record in this state, or a transcript of which has been filed, be not sued out within five years from the date of the judgment, or if five years intervene between the date of the last execution issued on such judgment and the time of suing out another execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor.

An action to revive a judgment can only be brought within twenty-one years from the time it became dormant, unless the party entitled to bring such action was, at the time the judgment became dormant, within the age of minority, of unsound mind or imprisoned, in which cases the action ma be brought within fifteen years after such disability is removed.

Dormant Partner.

The only way in which a partner can limit his personal responsibility is by an express stipulation to that effect, made with the party with whom the firm contracts the debt, or by entering into a limited partnership as authorized by statute, to wit:

Limited partnerships, for the transaction of mercantile, mechanical, manufacturing or mining business within this state, may be formed by two or more persons, upon the terms, and subject to the conditions and liabilities prescribed by statute, as follows:

Such partnerships may consist of one or more persons, who shall be called general partners, who shall be jointly and severally responsible as general partners are by law, and one or more persons who shall contribute, in actual cash payments, a specific sum, as capital, to the common stock, who shall be called special partners, and who shall not be liable for the partnership debts, except in the case hereinafter mentioned, (change of partners, fraud, etc.); but the capital invested by such special partner shall be held liable for all the debts of such firm.

Driving.

Municipal Corporations are empowered to provide by ordinance, and enforce the same, to prevent and punish fast driving or riding of animals, or fast

driving or propelling of vehicles through the public highways.

Also statute penalty for fast driving over toll bridge across the Ohio River, or toll or free county bridge, drawing or driving a vehicle on railroad track; or riding or driving into a railroad inclosure; and for riding or driving any horse or other animal on any sidewalk.

Embezzlement, Fraudulent Conversion—Penalty.

An officer, attorney-at-law, agent, clerk, guardian, executor, administrator, trustee, assignee in insolvency, servant or employee of any person, except apprentices and persons under age of eighteen years, who emmbezles or converts to his own use, or fraudulently takes or makes away with, or secretes with intent to embezzle or convert to his own use anything of value which shall come into his possession by virtue of his emloyment or appointment as such officer, attorney-at-law, agent, clerk, guardian, executor, administrator, trustee, assignee in insolvency servant or employee; and an officer elected or appointed to an office of public trust or profit in this state, and an agent, clerk, servant or employee of such officer or of a board of such officers, who embezzles or converts to his own use, or conceals with such intent, anything of value that shall come into his possession by virtue

of [his] office, or employment, is guilty of embezzlement, and shall be punished as for the larceny of the thing embezzled.

Evidence.

All persons are competent witnesses, except those of unsound mind, and children under ten years of age, who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.

The following persons cannot testify in certain respects:

First.—An attorney, concerning a communication made to him by his client in that relation, or his advice to his client; or a physician, concerning a communication made to him by his patient in that relation, or his advice to his patient; but the attorney or physician may testify by express consent of the client or patient; and if the client or patient voluntarily testify, the attorney or physician may be compelled to testify on the same subject.

Second.—A clergyman or priest, concerning a confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

Third.—Husband or wife, concerning any communication made by one to the other, or any act done by either in the presence of the

other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and the rule shall be the same if the marital relation has ceased to exist.

Fourth.—A person who assigns his claim or interest, concerning any matter in respect to which he would not, if a party, be permitted to testify.

A party cannot testify where the adverse party is the guardian or trustee of either a deaf and dumb or an insane person, or of a child of a deceased person, or is an executor or administrator, or claims or defends an heir, grantee, assignee, devisee, or legatee of a deceased person, except:

First.—As to facts which occurred subsequent to the appointment of the guardian, or trustee, etc., and, in other cases subsequent to the time the decedent, etc., died.

Second.—When an agent of a deceased person is competent to testify as a witness concerning a contract made by him as such agent, a party may testify on the same subject.

Third.—A party, or one having a direct interest, testifying to transactions or conversations with another party, the latter may testify as to the same transactions or conversations.

Fourth.—If a party offers evidence of conversations or admissions of the opposite party, the lat-

ter may testify concerning the same conversations or admissions.

Fifth.—In an action or proceeding by or against a partner or joint contractor, the adverse party shall not testify to transactions with, or admissions by, a partner or joint contractor, since deceased, unless the same were made in the presence of the surviving partner or joint contractor; and this rule shall be applied without regard to the character in which the parties sue or are sued.

Sixth.—If the claim or defense is founded on a book account, a party may testify that the book is his account book, that it is a book of original entries; that the entries therein were made by himself, a person since deceased, or a disinterested person, non-resident of the county. Whereupon the book shall be competent evidence, and such book may be admitted in evidence in any case, without regard to the parties, upon like proof by any competent witness.

Seventh.—If a party, after testifying orally, die, the evidence may be proved by either party on a further trial of the case, whereupon the opposite party may testify to the same matters.

Eighth.—If a party die, and his deposition be offered in evidence, the opposite party may testify as to all competent matters therein.

But nothing herein shall apply to actions for causing death, or actions or proceedings involving the validity of a deed, will, or codicil; and when a case is plainly within the reason and spirit of the last three paragraphs, though not within the strict letter, their principles shall be applied. The opposite party may be compelled to testify, as any other witness may be compelled.

Execution, Three Kinds.

First.—Against the property of the judgment debtor.

Second.—Against the person of the judgment debtor.

Third.—For the delivery of the possession of real property, and to make the damages and costs for witholding the same.

Lands and tenements, and goods and chattels, not exempt by law, subject to levy and sale. Goods and chattels must be first levied upon. If "no goods," then upon the lands. Officer must give ten days notice of sale of chattels, except when court, on good cause shown, on application of either party and due notice to adverse party, orders a private sale, with restrictions. Alias execution may issue for sale of any unsold goods. Sales must be at public auction. Alias executions may issue and levies be made until judgment is satisfied. When a levy is made upon lands, an

appraisal thereof by three disinterested freeholders, residents of county where land is situated, sworn to make an impartial appraisal, upon actual views of the property, of its real value in money. Thirty days notice by publication in a newspaper, etc., required for the sale of lands, and cannot be sold for less than two-thirds the appraised value. Land sales must be confirmed by the court, who thereupon orders a deed made to the purchaser.

Executions may be directed to the sheriff of any county. Stay of execution on judgments rendered by justice of the peace may be obtained upon good and sufficient bail, as follows: On a judgment for $5.00 and under, sixty days. For $5.00 and under $20.00, ninety days. On $20.00 and under $50.00, one hundred and fifty days. On $50.00 and upwards, two hundred and forty days. (See Exemption. Stay Bond).

Exemption.

Every unmarried woman may hold exempt from execution, attachment, or sale:

First.—Wearing apparel, to be selected by her, not exceeding in value $100.00.

Second.—One sewing machine.

Third.—One knitting machine.

Fourth.—A bible, hymn book, psalm book, and other books not exceeding $25.00 in value.

Beneficiary funds, and the regalia, records and journals of benevolent societies, are exempt.

Every person who has a family, and every widow, may hold exempt, etc.:

First.—The wearing apparel, beds, bedsteads, and bedding, necessary for the same; one cooking stove and pipe, and one other stove, and fuel sufficient for sixty days, provided for the use of such family.

Second.—Also one cow, or equivalent in furniture, if no cow, not exceeding $35.00 in value; two swine, or the pork therefrom, or if no swine, household furniture, not exceeding $15.00; six sheep, the wool shorn from them, or the cloth made therefrom, or in lieu thereof, household furniture, not exceeding $15.00; and food for such animals, sufficient for sixty days.

Third.—Bibles, schoolbooks and family pictures.

Fourth.—Provisions not exceeding $50.00 in value; articles of household and kitchen furniture, to be selected by the debtor, not exceeding $50.00 in value.

Fifth.—One sewing and knitting machine, tools and implements of trade, not exceeding $100.00 in value.

Sixth—The personal earnings of the debtor, or minor children, for three months, when claimed by affidavit of the debtor that such earnings are necessary to the support of the family.

Special exemption is made to every drayman, the head of a family, of his horse, harness and dray. To the head of a family engaged in agriculture, one horse, and one yoke of cattle, gearing for the same, and one wagon; and every head of a family practicing medicine, one horse, saddle and bridle; and books, medicines and instruments, of his profession, not exceeding $100.00.

Husband and wife living together, a widow or a widower living with an unmarried daughter or unmarried minor son, may hold exempt, etc., a family homestead not exceeding $1,000.00 in value. But neither can make such demand if the other has a homestead.

A single man, not actually supporting members of his family has no exemptions.

Exempt Insurance Money—When husband insures his life for the benefit of his wife and children, there is exempt from execution or claims of creditors, so much thereof as an annual premium of $150.00 will pay for. All pension money is absolutely exempt from execution or attachment.

Express and Implied Contracts.

(See Contracts.)

False Pretense.

Buying, receiving or concealing property obtained by; Penalty.—Whoever buys, receives or

conceals anything of value which has been stolen, taken by robbers, embezzled, or obtained by false pretense, knowing the same to have been stolen, taken by robbers, embezzled, or obtained by false pretense, shall be deemed guilty of larceny and punished accordingly.

Forcible Entry and Detention.

Justices of the Peace, within their proper county, have jurisdiction to inquire against those who make unlawful and forcible entry into lands and tenements, and detain the same, and against those who, having a lawful and peaceable entry into the same, unlawfully and by force hold them; and if it be found upon such inquiry that such entry or detention be the fact, to cause the complaining party to have restitution. Limitation of action, two years from time the cause accrued.

This proceeding is applicable in cases of tenants holding over their terms; sales of real estate, on execution, or other judicial process, when the judgment debtor was in possession when judgment was rendered; in sales by executors, etc.; and on partition, when any of the parties to the petition were in possession at the commencement of the suit; and in cases where the defendant is a settler, or occupier of lands or tenements, without color of title.

A jury may be demanded by either party, and exceptions may be taken, and error lies to the

Court of Common Pleas. If proceedings in error are not taken the officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and levy and collect the costs and make return.

Forgery.

(Forging or Altering Note, Bond, Lease, Will, Bank Bill, or Note, etc.; Uttering or publishing same.) Whoever falsely makes, alters, forges, counterfeits, prints, or photographs any record, or other authentic matter of a public nature, or any license or certificate authorized by the laws of this State, or any charter, letters patent, deed, lease, writing, obligatory, will, testament, annuity, bond, covenant, bank bill or note, check, bill of exchange, contract, or promissory note for the payment of money or other property, or any acceptance of a bill of exchange, or the number of any principal sum of any accountable receipt for any note, or any order, warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or any acquittance or receipt either for money or goods, or any acquittance, release, or discharge of any debt account, action, suit, demand, or other thing, real or personal, or or any plat, draft, or survey of land, or transfer of assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney,

or any power to receive money, or to receive and transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any bill, order, or warrant drawn by any Auditor for the payment of money at any public treasury, with intent to defraud; or utters or publishes as true and genuine any such false, altered, forged, counterfeited, falsely printed, or photograph matter, knowing the same to be false, altered, forged, counterfeited, falsely printed, or photographed, with intent to defraud, is guilty of forgery, and shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

Frauds and Fraudulent Representations.

Fraud in law for which an action may be predicted, is based upon a falsehood, perpetrated in bad faith, knowing the same to be untrue, and by which undue advantage is obtained by the guilty party.

An assertion made in good faith, which ultimately is found to be untrue, is not in general actionable, although another has been deceived and injured thereby.

Fraud consists of the intention to deceive, and must be in regard to something in which one party places trust and confidence in another, and where a confidential relation exists between the parties. The one complaining must have been

misled, otherwise he cannot, if he knew at the time the statement was false, have been influenced in his conduct by it. The falsehood must have induced the act, or omission of the party deceived, and who must have been damaged thereby.

The statutes attach a penalty for a large number of specific frauds, such as selling by false brand or labels; fictitious bills of lading; frauds in butter, cheese, and milk; adulteration of domestic wines; frauds in foods and drugs; selling land without title; sending letters to fraudulently obtain money; to prevent frauds in markets; selling by false weights, etc., etc.

Frauds of Owners on Consignees.

A person in whose name any property has been shipped or delivered to any warehouse-keeper or other factor or agent, to be shipped, who receives from the consignee thereof any advancement thereon of money, or any negotiable security, and who with intent to defraud, and without the consent of such consignee, disposes of such property, in any other way than as he agreed with such consignee, at the time of such advancement, shall be imprisoned in the penitentiary not more than three years or less than one year.

Fraud.

Fraud vitiates all contracts. Wherever goods are sold or obtained upon fraudulent statements,

the same may be replevined by the vendors, and contracts of sale rescinded. Goods purchased by a vendee without false statements, by a person who intends not to pay for them, renders sale voidable, such is the case if the vendee has no reasonable expectations of being able to pay, it being held equivalent to an intention not to pay, though not fraudulent, if vendee had reasonable expectation of being able to pay. It has been held by the Iowa Supreme court that the vendee is estopped from denying statements made to the agent of a mercantile agency.

Frauds and Perjurys, Statute of.

All deeds of gifts and conveyances of goods and chattels, made in trust to the use of the person or persons making the same, shall be, and hereby are declared to be void and of no effect. Every gift, grant, or conveyance of lands, tenements, hereditaments, rents, goods, or chattels, and every bond, judgment or execution, made or obtained with intent to defraud creditors of their just and lawful debts or damages, or to defraud or to deceive the person or persons purchasing such lands, tenements, hereditaments, rents, goods or chattels, shall be deemed utterly void and of no effect. No lease, estate or interest, either of freehold or term of years, or any uncertain interest, of, in, or out of lands, tenements or hereditaments, shall be assigned, or granted,

except by deed, or note in writing, signed by the party so assigning or granting the same, or his agent thereunto lawfully authorized, by writing, or by act and operation of law. No action shall be brought whereby to charge the defendant, upon any special promise, to answer for the debt, default or miscarriage, of another person; nor to charge any executor or administrator upon any special promise, to answer damages out of his own estate; nor to charge any person upon any agreement made upon consideration of marriage, nor upon any contract or sale of lands, tenements, or hereditaments, or any interest in, or concerning them; nor upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized.

Garnishee.

One having in his possession goods and chattels of another, the defendant in an attachment, or who is indebted to him, is called the garnishee. The statute provides a process by which such property, or indebtedness may be reached. (See Attachment, Affidavit.)

If upon answer of the garnishee it appears that he was possessed of property or was indebted to

the defendant, the court may order the delivery of such property, and the payment of the amount owing into court, or permit the garnishee to retain the same, upon giving bond, with surety, that the same shall be forthcoming, as the court may order.

In like proceedings before a justice of the peace, the constable may take like bond, or upon answer of indebtedness, may pay the money into court, and be discharged and allowed his costs. If the garnishee fail to appear and answer, he is answerable as for contempt of court, and liable to an action in favor of the plaintiff.

When Property and Garnishee Bound.—An order of attachment shall bind the property attached from the time of service; and the garnishee shall stand liable to the plaintiff in attachment for all property of the defendant in his hands, and money and credits due from him to the defendant from the time he is served with written notice in an order of attachment; but when property is attached in the hands of a consignee, his lien thereon shall not be effected by the attachment.

Grace.

What Instruments Entitled to Grace.—Bonds, notes, bills and checks, payable at a day certain after date, or after sight, shall be entitled to three days grace in time of payment; excepting, however, that all checks, bills of exchange, or

drafts, appearing on their face to have been drawn on any bank, banker, broker, exchange broker, or banking company, and payable on a specific day, or in any number of days after the day of sight or date thereof, shall be deemed due and payable on the day mentioned for the payment of the same, without days of grace being allowed thereon, and it shall not be necessary to protest the same for non-acceptance, nor to give notice of non-acceptance to the drawer or indorser.

Guarantor and Guarantee.

(See Bills and Notes.)

Husband and Wife.

Husband and wife contract towards each other obligations of mutual respect, fidelity, and support. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto. The husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able.

Neither husband nor wife has any interest in the property of the other, except as to wife's support above mentioned (but neither can be excluded from the other's dwelling), and the provision for the endowment of widow or widower, which is that a widow or widower who has not relinquished or been barred of the same,

shall be endowed of an estate for life in one-third of all the real property of which the deceased consort was seized as an estate of inheritance at any time during the marriage, and one-third of all the real property of which the deceased consort, at decease, held the fee simple in reversion or remainder; and also in one-third of all the title and interest the deceased consort had, at decease, in any real property held by article, bond, or other evidence of claim; and the widow or widower may remain in the mansion house of the deceased consort free of charge, for one year, if dower is not sooner assigned; but dower shall not be assigned to any widow or widower in any real property of which the deceased consort, at decease, held the fee simple in reversion or remainder, until the termination of the prior estate. A husband or wife may enter into any engagement or transaction with the other, or any other person, which either might, if married, subject, in transactions between themselves, to the general rule which controls the actions of persons occupying confidential relations with each other. They cannot, by any contract with each other, alter their legal relations, except that they may agree to an immediate separation, and may make provision for the support of either of them and their children during the separation. A married person may take, hold, and dispose of property, real or personal, the same as if unmarried. Neither hus-

band or wife, as such, is answerable for the acts of the other, so if the husband neglects to make adequate provision for the support of his wife, any other person may, in good faith, supply her with the necessaries for her support, and recover the reasonable value thereof from the husband; but if the wife abandons the husband, he is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him. When a divorce is granted by reason of the aggression of the husband, the wife shall, by force of the judgment of divorce, be restored to all her lands, tenements, hereditaments, not previously disposed of, and, if she so desire, the court shall restore to her the name she had before such marriage; she shall be allowed such alimony out of her husband's real and personal property as the court deems reasonable, having due regard to the property which came to him by marriage, and the value of his real and personal estate at the time of the divorce, which alimony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable, either in gross or installments, as the court deems just and equitable, and if the wife survive her husband, she shall also be entitled to her right of dower in the real estate of her husband not allowed to her as alimony, of which he was seized at any time during coverture, and to which she had not relinquished her right of dower.

When the divorce is granted by reason of the aggression of the wife, she shall be barred of all right of dower in the lands of which her husband is siezed at the time of filing the petition for divorce, or which he thereafter acquires, whether there is issue or not; and the effect of the judgment of divorce shall be to restore to her the whole of her lands, tenements, and hereditaments not previously disposed of, and the court shall adjudge to her such share of her husband's real or personal property, or both, as it deems just and reasonable.

Hotels.

All persons within the jurisdiction of the State are entitled to full and equal enjoyment of the accommodation, advantages, facilities and privileges of inns, restaurants, eating-houses, barber shops, public conveyances on land and water, theatres, and all other places of public accommodation and amusement, subject only to the conditions and limitations established by law and applicable to all citizens. Inn-keepers who keep a suitable iron safe or vault, in good order, and fit for the safe custody of money and other articles of value, and who keep on the doors of the sleeping rooms used by their guests, suitable locks and bolts, and on the transoms and windows of the rooms suitable fastenings, and who keep a copy of the law (Sec. 4427, R. S.) printed by itself, in large, plain Eng-

lish type, and framed, constantly and conspicuously suspended in the office, bar-room, saloon, reading, sitting and parlor rooms of their inn, and also a copy printed by itself in ordinary sized, plain English type, posted upon the inside of the entrance door of every public sleeping room of their inn, shall not be liable for the loss of such articles suffered by any guest, unless the articles have been offered by the guest to the inn-keeper to be so deposited, and the inn-keeper has refused or omitted to take them and deposit them into such safe or vault for custody, and to give the guest a receipt therefor; that every inn-keeper is liable for any loss of articles by a guest in his inn, caused by the theft or negligence of the inn-keeper or any of his servants.

Hotel keepers are required by law to provide suitable and convenient exits, by means of fire escapes or otherwise, from the different upper storeys of their hotels or inns that are more than two storeys high; and where travelers or boarders are lodged above the second storey of the building, to provide a good rope or other life-line for each sleeping room.

A keeper of a tavern or other house of public resort, who suffers any game whatever, for a wager, to be played at or within such tavern or other house of public resort, or in any out-house, building or erection appendant thereto, shall be fined not more than $200.00, nor less than $50.00.

An inn-keeper entrusted by his guest with anything of value for safe-keeping, and who embezzles or fraudulently converts the same to his own use, is guilty of embezzlement and shall be punished accordingly.

By law, hotel saloons must be kept closed on Sunday.

Any person who shall obtain food, lodging or other accommodation at any hotel, inn, boarding or eating-house, with intent to defraud the owner or keeper thereof, shall be fined not exceeding $200.00, or imprisoned in the county jail or city workhouse not exceeding three months or both. Refusal or neglect to pay for such food, lodging or other accommodation on demand is considered *prima facie* proof of the fraudulent intent. This law, however, does not apply to regular boarders, nor where there has been an agreement for a delay in payment. It is the duty of every hotel, inn, or boarding-house keeper within this State to keep a copy of the law upon the inside entrance door of every public sleeping room and in the office and dining room.

Illegal Considerations.

(See Consideration. Contracts).

The law will not enforce a contract based upon a consideration subversive of public morality, or aid in its execution, nor permit either party to be heard to avoid the fraudulent act, as where one

conveyed lands, etc., to defraud creditors; or a note given by an insolvent to a creditor not to object to his discharge in bankruptcy or under the insolvent debtors' act; or for gambling purposes; or for lobbying or electioneering to procure for another a public office; and money advanced for an illegal purpose cannot be recovered.

Illegal Contracts.

(See Contracts. Illegal Considerations).

Ignorance.

Ignorance of the law is not a valid plea in avoidance of a legal contract, though an onerous burden and personal hardship, or an excuse for not performing in a proper manner what one agrees to do.

Implied Promise.

(See Contracts).

Inducements.

A long line of judicial authorities have held that where one has made statements or declarations to induce others to act upon them, for the purpose of obtaining to himself some personal advantage, he cannot deny their truth, where a person, in good faith, has acted upon them.

Insolvent Debtor.

The effect of a certificate of discharge of an insolvent debtor, is a protection of such person for-

ever after from arrest or imprisonment for any debt or demand, mentioned in the schedule of his debts, made in the insolvency proceedings; but not from arrest or imprisonment for any debt or demand for money or property received while acting in a fiduciary capacity. (See Assignment for Benefit of Creditors).

Installments, How Interest to be Computed.

The judicial rule is that on part payment of an interest bearing debt, before the debt is due, the amount paid is applied upon the principal, and the portion of interest which has accrued on the principal so extinguished, at the time of such payment. After a debt has become due, and a payment is made exceeding the interest due, interest is calculated on the debt up to the time of payment, and added to the principal, and the payment subtracted from the sum total. In cases where the payment is less than the interest due, the surplus interest must not be added to the principal, but interest continues on the original principal as though no payment had been made until the time when the several payments, added together, are greater than the interest due, when the surplus of payments is applied toward cancelling the interest. On settlement of accounts, interest is allowed upon the ascertained balance; but where there is no settlement, in computing interest, it is not allowable to make annual rests

and carry the interest as principal in the next statement. Where interest is payable annually, if not paid, simple interest thereon is allowed.

Insurance, Fire.

In fire insurance it is best to only insure in stock companies. Under the laws of Ohio, where there is a total loss by fire, the company is bound to pay the full amount of insurance, even when the amount of insurance is greater than the loss; while in a partial loss by fire, only the actual loss can be collected.

Interest.

The maximum rate of interest which parties may stipulate in a bond, bill, promissory note, or other instrument in writing, for the forbearance or payment of money at any future time, is eight per centum per annum, payable annually; and judgments, decrees and orders rendered on such stipulations, bear the like interest so stipulated, until paid. In other cases, when no rate is stipulated, and upon book account, or settlement, and upon all verbal contracts, and judgments, and decrees thereon, the creditor is allowed interest at the rate of six per cent. per annum, and no more.

Usurious interest will be deemed, as to the excess above the rate allowed by law, to be payments on account of principal, and judgment will be for the balance, after deducting the excess of interest so paid; and the debtor having paid, or

agreed to pay, such exorbitant interest may have remedy and relief. (See Installments, Etc.)

Inventory.

Sheriffs and constables are required to inventory and cause to be appraised, goods, etc., attached; of property sold, and unsold. Executors and administrators, guardians and insolvent debtors, must, each respectively, make and return an inventory in conformity to the statute.

Irregularity.

Irregularity in the proceedings of the court, jury, referee, master, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial, will entitle the aggrieved party to a new trial. And judgments, etc., of the Common Pleas, or Circuit court, may be vacated or modified, after the term at which the same was made, for mistake, neglect, or omission of the clerk, or irregularity in obtaining a judgment or order by conforming to the necessary statutory requirements as to time, manner, etc.

Judgment.

Judgments are generally taken either upon the merits of a case, by confession, by default of nonsuit, and by dismissal of the action without prejudice to a future action; and judgments for costs generally follow, as of course.

Appeals From Judgments.—(See Courts). Judgments of the Court of Common Pleas, and of justices of the peace, when transcript is filed in common pleas, are a lien upon the real estate of the judgment debtor within the county where the judgment is entered. Judgments become dormant if execution is not sued out within five years from date.

All judgments obtained during term time of any same term of Court of Common Pleas, or within ten days thereafter, pro-rate on payment of same. Executions can be ordered immediately after judgment.

Jurisdiction of Justices of the Peace.

Generally limited to the township in which they were elected and reside, and in civil cases to not exceeding $300.00 in amount of debt or damages; and embraces contracts concerning personal property, and for injuries for the same. His jurisdiction extends throughout the county, for the following purposes:

To administer oaths; take acknowledgment of deeds; to solemnize marriage; to issue subpœnas for witnesses; try actions for forcible entry, etc.; issue attachments and executions, and try the right of property taken thereon when claimed by third party; try cases of contested election in the absence of the probate judge, and actions against other justices, in certain cases, and also when the

only justice, in a town, is interested, or related, and in cases of trespass to real or personal property. (See Courts).

Over three hundred dollars, no jurisdiction. In replevin suits, where the appraisal shows property to be worth over three hundred dollars, justices must certify case to Common Pleas.

Landlord and Tenant.

The statute expressly provides that the lessee of any building, which, without any fault or neglect on his part, is destroyed, or so injured by the elements or other cause, as to be unfit for occupancy, shall not be liable to pay rent, after such destruction or injury, unless otherwise expressly agreed in writing; and thereupon shall surrender possession of the premises. The unlawful sale of intoxicating liquors works a forfeiture of the tenant under any lease or contract of rent of the premises. A verbal contract is binding on both parties, if the tenant took possession under it. The tenant only can sue for a trespass upon the leased land. Leases for more than three years must be witnessed, acknowledged, etc., same as deeds. Never lease property without a written lease. (See Forcible Entry and Detention).

Lease.

The terms of an express contract of lease fix the liability of the lessee or tenant for the entire

period, and if he assigns it he is not discharged of liability in an action for the rent. And the landlord may elect to sue the lessee or assignee, or both, for the rent accruing after the assignment. Where there is a provision of forfeiture for non-payment of rent, the landlord may re-enter and take possession, upon proof of demand, when the rent becomes due. Such demand must be made on the premises, and of the exact sum due. The absence of the tenant will not excuse such demand, and it must be made just before sundown on the day the rent falls due, stating the premises for which the demand is made, and the month or time for which the demand is claimed. A written or printed three days' legal notice must be served, at least, three days before action for possession can be commenced. Personal service of notice must be made on the tenant, when it can be done with reasonable search and inquiry. When tenant cannot be found by reasonable search and inquiry, the notice may be left at the usual place of residence of the tenant, but the plaintiff will have to prove the reasonable diligence of search and inquiry before notice was left at residence. (See Forcible Entry and Detention).

Letters.

Letters sent by mail are presumed to have reached ther destination promptly, and been re-

ceived by the person addressed, if living at the place where they usually receive letters. Letters of administration are generally conclusive evidence of the death of the person upon whose estate they are granted. (See Administration.) Contracts by letter between parties are binding.

Licenses

Are required to be obtained by auctioneers, for building, circuses, entertainments, hacks, junk dealers, menageries, pawnbrokers, peddlars, street cars, theatres, vehicles, for keeping gunpowder, hucksters, foreign insurance companies, marriage, and for several other trades, businesses and professions; all of which are liable to be revoked, and penalties are provided for violations of license laws.

Liens

Upon Water Craft, Buildings, Bridges, Etc.—In addition to judgment liens, a lien attachee in favor of common carriers, and warehousemen, hotel-keepers, and liverymen, upon property of their patrons, lodgers, and boarders, transported, or for boarding, etc., the same being in their possession in such capacity; and persons who perform labor, or furnish machinery or material, for constructing, altering, or repairing a boat, vessel, or other water craft, or for erecting, altering, repairing, or removing a house, mill, manufactory, or any furnace or furnace material

therein, or other building appurtenances, fixture, bridge, or other structure, or for digging, drilling, or boring any gas well, oil well, or any other well, by virtue of a contract with the owner, or his authorized agent, shall have a lien to secure the payment of the same, upon such boat, vessel, or other water craft, or upon such house, mill, manufactory, or other building, or appurtenance, fixture, bridge, or other structure, or upon such gas well, oil well, or any other well, and upon the material, and machinery so furnished, and upon the interest of the owner in the lot of [or] land on which the same may stand, or to which it may be removed.

Lien

Upon Mines For Labor.—Any person who performs labor in mining coal, or removing the same from the mines, or other manual labor connected therewith, for any coal or mining company, owning, operating, or leasing coal mines within this State, by virtue of a contract with the owner, owners, or his or their authorized agent, shall have a lien to secure the payment for the same upon the mine or mines of such company, and upon all the rights of the company or corporation owning or leasing such mines, and upon all the personal property of any such company or corporation used in conducting their business of

mining coal, whether the same be located at or near the mines, or elsewhere.

Leasehold.—Every building erected, or other improvement made, or machinery or material furnished, on leased lots or lands, shall be held for debt contracted for or on account of same, and also the leasehold-term for such lot and land on which the same is erected or made; and in case the lessee shall have forfeited his lease, the purchaser of the building and leasehold-term, or so much thereof as remains unexpired, shall be liable to the assignee of such leasehold-term, and as such, shall be entitled to pay to the lessor all arrears of rent, or other money, interests, and costs due under said lease, unless the lessor shall have regained possession of the leasehold land, or obtained judgment for the possession thereof, on account of the non-compliance, by the lessee, with the terms of the lease, in which case the purchaser of the improvements, under this act, shall have the right only to remove the improvements within sixty days after he shall purchase the same, and the owner of the ground shall receive the rent due him, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of removing the building.

Penalty For Wrongful Use of Material Purchased by Contractor.—Any contractor or sub-contractor who shall purchase materials on

credit, and represent, at the time of purchase, that the same are to be used in a designated building, or other improvement, and shall thereafter use, or cause to be used, the said materials, in the construction of any building or improvement other than that designated, without the written consent of the person of whom the material was purchased, with intent to defraud such person, shall be deemed guilty of misdemeanor, and on conviction, shall be punished by a fine not exceeding $500.00.

Lien

Upon Contiguous Lots or Separate Buildings.—When the improvement consists of two or more buildings united together, and situated upon the same lot, or contiguous lots, or upon separate buildings upon contiguous lots, and directed under one general contract, it shall not be necessary to file a separate lien upon each building for the work done or material furnished in erection of such improvements.

Action.—In all cases where a lien shall be filed, according to law, by any person other than a contractor, it shall be the duty of the contractor to defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which such lien shall be

filed; and in case of judgment against the owner or his property, upon the lien, he shall be entitled to deduct, from any amount due by him to the contractor, the amount of such judgment and costs, and if he shall have settled with the contractor in full, shall be entitled to recover back from the contractor, any amount so paid by the owner, for which the contractor was originally the party liable.

WHO IS OWNER OR PROPRIETOR.—Every person, including *cestui que* trusts, for whose immediate use, enjoyment, or benefit, any building, erection, or improvement shall be made, shall be included in the words, "owner" or "proprietor."

FILING OF LIEN.—Such person, in order to obtain such lien, shall within four months from the time of performing such labor, or furnishing such machinery or material, file with the recorder of the county where the labor was performed, or the machinery or material furnished, an affidavit containing an itemized statement of the amount and value of such labor, machinery or material, and a description of any promissory note or notes given for such labor, machinery or material, or any part thereof, with all credits and off-sets thereon, a copy of the contract, if it is in writing, a statement of the amount and time of payment to be made thereunder, and a description of the land on which the gas well, oil well, or other wells are

situated, or the land on which the house, mill, manufactory, or other buildings or appurtenances, fixtures, bridge, or other structure may stand, or to which it may be removed; and the same shall be recorded in a separate book to be kept therefor, and shall operate as a lien from the date of the first item of the labor performed, or the machinery or material furnished upon or towards the property designated as above, and the interest of the owner in the lot of land on which the same may stand, or to which it may be removed, for six years from and after the date of the filing of such attested statement. If an action be brought to enforce such lien within that time, the same shall continue in force until the final adjudication thereof, and there shall be no homestead or other exemption against any such lien.

Lien

Of Sub-Contractor Upon Payments Due Head-Contractor, How Obtained; Filing of Statement of Account, Etc.—Any sub-contractor, material man, laborer or mechanic, who has performed labor, or furnished material, or machinery; who is performing labor, or furnishing material or machinery, or who is about to perform labor, or furnish material or machinery for the construction, alteration, removal, or repairs of any property, appurtenance or structure, consisting of water craft, buildings, bridges, etc., or for

the construction, improvement or repair of any turnpike, road improvement, or other public improvement, provided for in a contract between the owner, or any board, or officer, and a principal contractor, and under a contract between such sub-contrator, material man, laborer or mechanic, and a principal contractor or sub-contractor, may at any time of beginning to perform such labor, or furnish such material or machinery, or at any time thereafter, not to exceed sixty days from the performance of such labor, or the delivery of such machinery or material, file with the owner, board or officer, or the authorized clerk or agent thereof, a sworn and itemized statement of the amount and value of such labor performed, and to be performed, material or machinery furnished, containing a description of any promissory note or notes that may have been given by the principal contractor or sub-contractor on account of said labor, machinery or material, or any part thereof, with all credits or off-sets thereon.

Such Payments to Be Retained on Receipt of Notice.—Upon receiving the notice, such owner, board or officer, or authorized clerk, agent or attorney thereof, shall detain in his hands all subsequent payments from the principal or sub-contractor to secure such claims and estimates of other sub-contractors, material men, laborers, mechanics or persons furnishing materials to, or

performing labor for any contractor or sub-contractor, who may intervene before the next subsequent payment under the contract, or within ten days thereafter.

When and How Sub-Contractor May Obtain Lien on the Property of the Owner—Date of Lien.—If out of subsequent payments, as they severally fall due, under the contract, and for ten days thereafter, the owner or his authorized agent refuse to pay, when due, the whole, or a pro-rata amount, as the case may be, of the sworn statement or estimate of any sub-contractor, material man, laborer, mechanic or person furnishing material, he shall, upon filing with the recorder of the county wherein the property is situate, an affidavit containing an itemized statement and description of any note with the amount and value of such labor, machinery, or material, with all credits and set-offs thereon, together with the statements of the amount and value of such labor, machinery, etc., and copy of contract, statement of amount, time of payment to be made thereunder, and a description of the land on which the well is situated, or house, mill, manufactory, or other building, fixture, bridge, etc., may stand, as the case may be, from principal contractors, have a lien to secure the payment of such claim upon the boat, vessel, or other water craft, or upon the house, mill, manufactory, building, appurtenance,

fixture, bridge, or other structure, or gas well, oil well, or other well upon which the labor was done, or machinery or materials furnished, and upon the interest of the owner in the lot of land on which the same stands, or to which it may be removed, which lien shall date back from the date of the furnishing of the first item of such labor, machinery or material, and have the same operation, effect and duration, and be subject to the same obligations with respect to the owner, or his authorized agent, as the lien of a head contractor in similar cases.

Limitation of Actions.

Action for forcible entry, etc., on real property, must be brought within two years from the time when the cause accrued. Action upon a specialty, or agreement in writing, within fifteen years. On contract not in writing, within six years. When payment has been made upon any demand founded upon contract, or a written acknowledgment thereof, or promise to pay the same, has been made and signed by the party to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgment or promise. For trespass upon real property; and for detaining, or injury, and for the specific recovery of personal property, within four years. For the wrongful taking of personal property, the cause of action does not accrue until the

discovery of the wrong-doer. For relief on the ground of fraud, cause of action does uot accrue until discovery of the fraud. Action upon a statute for a penalty of forfeiture is limited to one year, unless a different limitation is prescribed. Assault, libel, slander, battery, false imprisonment and malicious prosecution, one year.

Mail.

(See Postal Rules).

Malicious Prosecution.

Action for, abates by death of either party. Plaintiff does not recover costs when the damages assessed are less than $5.00. Actions are limited to one year. Justice of the peace has no jurisdiction.

Married Women.

(See Husband and Wife).

Master and Servant.

Generally, the master is liable to third persons for misfeasance, negligence and default of the servant, even though perpetrated without participation or knowledge of the master, provided the want of duty arose in the line of his employment; but the master cannot be subject to exemplary or vindictive damages for wrongs done by the servant, without his knowledge or sanction, though the same was in the course of such employment, but for just compensation only.

Minor.

The age of majority is twenty-one years for male, and eighteen years for female persons. Minors may be adopted and thereby made heirs of their adopted parents. Consent of parents necessary before marriage. Boys under twelve not to be employed in mines, factories, workshops, or manufactories. Compelled to attend school between eight and fourteen years of age. Entitled to be supported by their parents.

Debts contracted by a minor, except for necessities, cannot be recovered, unless acknowledged after majority. It is not safe to sell minor goods without authority from parents or guardians.

Misrepresentation.

(See Frauds and Fraudulent Representations).

Mistake.

Mistakes in the accounts of executors, guardians, trustees, etc., may be corrected in Probate court; and proceedings may be had in the Court of Common Pleas to correct mistakes of the clerk, or irregularity in obtaining judgment; and the court has power to relieve against any errors, defects, or mistakes in deeds of conveyance of lands. Money paid by mistake may be recovered back. (See Irregularity).

Mortgage.

The requisites of a mortgage are that a man above the age of twenty-one, or a female above the age of eighteen years, who executes such instrument for the conveyance or incumbrance of lands, shall sign the same, and acknowledge the signing in the presence of two witnesses, who must attest the same and subscribe their names thereto; and such signing must be acknowledged before a judge of a court of record, or the clerk thereof, a county surveyor, justice of the peace, notary public, or mayor, who must certify such acknowledgment on the same sheet on which such mortgage is written or printed, and subscribe his name to such certificate. Mortgages so executed, must be recorded in the county where such premises are situated, and they take effect when recorded. If not so recorded within six months from the date thereof, they will be deemed fraudulent, so far as relates to subsequent *bona fide* purchasers, having no knowledge thereof.

Mortgages, Chattel.

A mortgage, or conveyance, intended to operate as a mortgage of goods and chattels, which is not accompanied with an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, subsequent purchasers, and mortgagees in good

faith, unless the mortgage or a true copy thereof be forthwith deposited as directed in the next paragraph.

The instruments mentioned in the last paragraph shall be deposited with the township clerk of the township where the mortgagor resides at the time of the execution thereof, if a resident of the State, and if not such resident, then with the clerk of the township in which the property so mortgaged is situated at the time of the execution of the instrument; but when the mortgagor is a resident of a township where the office of county recorder is kept, or when the mortgagor is a resident of a township entirely merged in a city or incorporated village, in which the office of county recorder is kept, or when he is a non-resident of the state, and the property is within such township, the mortgage shall be filed with the county recorder.

The officer receiving such instrument, shall indorse thereon the time of receiving it, and its consecutive number, and enter in a book, to be provided by the township trustees or the county recorder, as the case may be, the names of all the parties thereto alphabetically arranged, with the number of the instrument, its date, the day of filing it, and the amount secured thereby, which entry shall be repeated alphabetically, under the name of every party thereto; he shall deposit the instrument in his office, to be there kept for the

inspection of all persons interested; and when such mortgage is refiled or cancelled, the date of such refiling or cancellation shall be entered upon the margin of such record opposite the original entry. If the party depositing the instrument desires to have it recorded, the officer shall record the same at the expense of the person making the request, in a book to be provided by the township trustees or county recorder, as the case may be; the officer shall enter upon the margin of such record, when the instrument is refiled, an affidavit, credit, or statement placed thereon after it was recorded; and when it has been satisfied, the party holding it shall, forthwith, notify the officer who made record thereof, who shall, without delay, note such cancellation and satisfaction upon the margin of the record without charge therefor.

The mortgagee, his agent, or attorney, shall, before the instrument is filed, state thereon, under oath, the amount of the claim, and that it is just and unpaid, if given to secure the payment of a sum of money only, and if given to indemnify the mortgagee against a liability as surety for the mortgagor, such sworn statement shall set forth such liability, and that the instrument was taken in good faith to indemnify against loss that may result therefrom.

Every mortgage so filed shall be void, as against the creditors of the person making the same, or

against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless, within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement verified, as provided in the last paragraph, together with a statement exhibiting the interest of the mortgagee in the property at the time last aforesaid, claimed by virtue of such mortgage, is again filed in the office where the original was filed.

Where a party gives more than one chattel mortgage, the preference exists in the order of filing. Where a mortgagor of chattel property disposes of the same without consent of mortgagee, the mortgagee can replevin the same wherever found; and the mortgagor will be held criminally liable. A chattel mortgage upon a stock of goods, in a store, where stock is daily been purchased and sold, is not good against execution or attaching creditors, unless possession has been given to mortgagee.

Mechanics' Lien.

(See Lien).

Necessaries.

Persons under age, or males under twenty-one, and females under eighteen years, are competent to contract for necessaries, at a reasonable price,

and such contract will be binding upon him the same as if he were of full age. Food, lodging, medicines and apparel suitable to his or her estate, are comprised in the term necessaries.

A husband is liable for necessaries for his wife, unless she leaves him without his consent, lives in adultery, or elopes.

Negligence.

In a legal sense, negligence for which a person may be liable in damages, is involved in various titles. As a general proposition, one performing a lawful act is not responsible for an injury arising therefrom, unless it is occasioned by his own fault. Mere omission to do a thing is not actionable, unless it involved the non-performance of a legal duty; otherwise, the party injured, may recover for the direct damages, unless, such party himself, contributed to the immediate consequences.

Negotiable Instruments.

(See Bills and Notes).

Non-Resident.

Action against a non-resident of the State, or a foreign corporation, may be brought in any county in which the defendant has property, or debts due him, or where such defendant is found. If a foreign insurance company, the action may be brought in a county where the cause or some

part thereof arose. In attachment against a non-resident, undertaking is not required. Attorney or agent may verify pleadings or make affidavit in attachment of a non-resident. Non-resident plaintiff or plaintiff becoming non-resident must furnish security for costs. Service of process on a non-resident defendant, made by publication, six weeks in a newspaper, if a daily paper, once a week is only required.

Note.

(See Bills and Notes).

Notice.

(See Non-Resident).

Notice to Vacate.

(See Lease).

Obtaining Property or Signature by False Pretense.

Whoever, by any false pretense, with intent to defraud, obtains from any person, anything of value, or procures the signature of any person, as maker, indorser, or guarantor thereof, to any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and whoever sells, barters, or disposes of, or offers to sell, barter, or dispose of, any bond, bill, receipt, promissory note, draft, or check, knowing the signature of the maker, indorser, or guarantor thereof, to

have been obtained by any false pretense, shall, if the value of the property or instrument so procured, sold, bartered, or disposed of, or offered to be sold, bartered, or disposed of, if thirty-five dollars or more, be imprisoned in the penitentiary not more than three years, nor less than one year; or if the value is less than that sum, be fined not more than one hundred or less than ten dollars or imprisoned not more than sixty, nor less tha ten days, or both. (See Property Statements).

Ownership of Property.

Possession is presumptive, though not conclusive evidence of ownership. One may have the right of possession and not of ownership. In an action for the recovery of real property, the plaintiff must allege a legal estate in the described land, and that he is entitled to the possession thereof, and that defendant unlawfully keeps him out of possession.

Parties to Action.

Every action must be prosecuted in the name of the real party in interest. An account or other demand assigned, must be sued in the name of the assignee, and not of the original party. If, however, a contract is made directly with one person, for the benefit of another, such cases are an exception to the rule that the real party in interest must sue. Administrators or executors can, of

course, sue upon the claims of the decedent. Where a statute expressly authorizes a certain person or officer to sue, the directions of the statute must be followed. All persons having any interest in the subject of the action, and in obtaining the relief prayed for may, in general, be joined as plaintiffs. All united in interest must be joined as plaintiffs except, if one will not consent, he may be made a defendant, the reason being stated. In cases of general and common interest, and the parties are numerous, one may sue for the benefit of all.

Any person may be made defendant who has, or claims to have, an interest in the controversy adverse to the plaintiff, or who is a necessary party to the complete settlement of the matter involved. So those who are united in interest, or jointly liable upon the same obligation, must be joined as defendants. When several persons have done a wrong, the plaintiff may elect to sue them jointly or separately. In questions of general interest, and defendants are many, one may defend for all. Infants may sue by guardian or next friend. (See Husband and Wife).

Partner and Partnership.

A communion, or sharing in profits of a business, is, in general, decisive of the question of partnership. Whatever stipulation there may be between associates, or however small his interest

in capital, profit, or loss, each individual of a firm will be liable for the whole amount of legal liabilities incurred. Each party has power to bind the firm in the line of its proper business; and such partnership may be dissolved at any time by notice to co-partners (though the partner taking this advantage, renders himself liable to damages for a breach of the articles of partnership), and is dissolved absolutely on the death of one. And the survivors may sue and be sued in respect to the business, or executor or administrator of deceased partner may join.

Partners may be sued by the firm name.

Limited partnerships may be formed for mercantile, mechanical, manufacturing, or mining business, etc., by two or more persons, subject to the condition of the statute, banking and insurance excepted.

Such are constituted of general and special partners, the first being liable jointly and severally, as general partners are by law, and the second, who shall contribute in cash a specific sum to the capital stock, and who shall not be liable for partnership debts, except to the extent of his capital, so invested. The certificate of such partnership, signed by each, must contain

First.—The name of the firm.

Second.—Th name and residence of each, distinguishing who are general, and who are special partners.

Third.—The amount of capital contributed by each.

Fourth.—The nature of the business; and

Fifth.—When to commence and when to terminate.

The certificate must be acknowledged and recorded the same as a deed of land, and a copy thereof published in a newspaper of the county, of their principal place of business, for six weeks immediately after it is recorded. The word "limited" shall be the last word of the name of every such partnership association.

The business of the partnership shall be conducted under a firm name, in which the names of all general partners shall be inserted, except when there are two or more than two general partners, the name may consist of the name of either one or more of such partners, with the addition of the words "& Co." If any special partner permits his name to be used, he shall be deemed a general partner; and the partnership shall put up in a conspicuous place, on the outside and in front of the building in which it has its chief place of business, a sign, on which shall be placed in legible English letters, all the names in full of all the general partners therein, in default of which, no action against the partners shall abate or be dismissed because the plaintiff, to prove the allegation on his pleadings as to the names or num-

bers of the members of the firm; but a firm of general partners that have transacted business under one firm name for more than five years, may organize a special partnership to continue the same business, containing any of the same or additional partners, and adopt the firm name before used by such general partnership, subject, however, to the provision requiring such special partnership to put up a sign containing the names in full of all general partners.

When a member of any partnership in the State dies, the surviving partner or partners shall, within thirty days after his death, make application to the probate judge of the county in which the partnership existed, upon first giving notice to the administrator or executor of the deceased partner of the application, for the appointment of three appraisers, whose duty it shall be to make out, under oath, a full and complete inventory and appraisement of the entire assets and liabilities of the partnership, and forthwith deliver the same to the probate udge, to be by him filed, but not recorded in his office.

If the surviving partner or partners neglect or refuse to have such inventory and appraisement made, the administrator or executor of the deceased partner must have the same made, in accordance with the provisions of the preceding paragraph.

Part Performance.

There can be no recovery upon a contract to do and complete a piece of work, unless the party fully perform the same. A party cannot abandon a specific contract, after a part performance, and recover for the amount done, without legal cause, or showing an assent of the employer to such abandonment, or acceptance of the work unfinished. (See Contract).

Payments, How Applied.

A person who owes another two or more accounts, may, in making a payment, direct upon which account the money shall be applied; if the payment made just equals the amount of one of the debts, the law presumes, in the absence of any directions as to its application, that that is the debt intended to be paid. If no directions are given, at the time of payment, as to what account it shall be applied on, the creditor may apply the payment on any one of the accounts. In the absence of the debtor directing the application of the payment, or the creditor making the application on some particular account, the law applies it on the oldest account.

Penalty of a Bond.

Where a bond is given for one hundred dollars, conditioned, that if the signer of such bond shall pay the holder thereof, within one month

from the date of the same, the sum of fifty dollars, said bond shall be void, the less sum only, on default, can he recovered, the larger sum being mere penalty.

Postal Rules.

Anyone who dunns a debtor on a postal-card, renders himself liable under United States' laws; or the same, in regard to putting anything on an envelope, to indicate that the contents are a dunning letter.

Power of Attorney.

(See Conveyance. Confession of Judgment).

Promissory Note.

(See Bills and Notes).

Proof of Claim.

When causes of action are not put in issue by answer, judgment will be taken as upon default.

In insolvency proceedings, proof must be made by affidavit, that the claim is just and lawful, and that there are no set-offs, or counter-claims thereto. Claims against a decedent's estate, the executor, etc., may require satisfactory vouchers thereof, and also affidavit of the claimant, that the sum is justly due, that no payments have been made thereon, and that there are no set-offs against the same, to the knowledge of the claimant.

Property Statements.

Where it is possible, vendors should require vendees seeking to obtain credit, to give statements in writing, signed by said vendees, that they may have the best of proof regarding the fraud. (See Fraud).

Receipt.

Upon a settlement, and giving a receipt in full of all demands, it is presumed that all demands then and theretofore existing were adjusted and settled, but the party giving it will not be precluded from showing a mistake in the settlement, and recovering what is truly and in fact due him.

The altering, forging, counterfeiting, etc., of receipts is punishable the same as forgery. In an action at law, a receipt is *prima facie* evidence only, being subject to explanation regarding mistakes.

Redemption.

Real estate sold on execution, may, at any time before confirmation of such sale, be redeemed by the judgment debtor, by depositing the amount of the judgments, costs., etc., including poundage and interest, with the clerk of the court. All lands and town lots sold for taxes, at delinquent sale, may be redeemed at any time within two years after the sale thereof; but any lands sold for taxes, belonging to any person within the age

of minority, of unsound mind, or imprisoned, may be redeemed at any time within two years, after such disability is removed.

Replevin.

The possession of specific personal property may be recovered in this action.

Affidavit For Order of Delivery.—A writ will issue on filing affidavit of plaintiff, his agent or attorney, showing:

First.—A description of the property claimed.

Second.—That the plaintiff is the owner of the property, or has an interest therein; and if the interest or ownership is special, or partial, the facts shall be stated.

Third.—That the property is wrongfully detained by the defendant.

Fourth.—That it was not taken on process, issued against the plaintiff, nor for a tax; or if taken on such process, that the property was exempt from execution, expressly, or upon demand or selection by the plaintiff.

Plaintiff to Give an Undertaking.—The officer shall, except when the property replevined consists of the articles stated in the next paragraph, deliver the property so taken to the plaintiff, his agent or attorney, when there is executed, by sufficient surety of the plaintiff, a written undertaking to the defendant, in at least

double the value of the property taken, to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him; and the undertaking shall be returned with the order.

Duty of Officer When Property Consists of Heir-Looms, Etc.—When the property replevined consists of an heir-loom, personal keepsake, or other article, the value of which consists, in whole or in part, in its being a relic, model, gift, family picture, painting, or rare production of art or nature, and not wholly in its general marketable character, the officer shall retain and safely keep the same, subject to the order of the court; if the defendant, his agent, or attorney, within ten days after the same is replevined, serve a written notice upon the officer that he will demand the return of the same, upon the final trial of the case, and that he will, at the next term of the court, move for an order, requiring the officer to retain the property, subject to the final order of the court; and if the defendant fail to give the notice aforesaid, or the court, upon application of either party, refuse to order the officer to retain the property, for the reason that it does not belong to one or more of the kinds of personal property aforesaid, the officer shall deliver the property to the plaintiff, his agent or attorney, upon the execution of an undertaking, as provided in the preceding paragraph, to be filed with the clerk of

the court within ten days from the expiration of the time to give the notice, or in case the notice i given within ten days after the refusal of the court to order the officer to retain the property.

How Value of Property Fixed.—For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two or more responsible persons, whom the officer shall swear truly to assess the value thereof.

When Officer may Break Open Building.—The officer, in the execution of the order of delivery, may break open any building or inclosure, in which the property claimed, or any part thereof, is concealed, but not until he has been refused an entrance into the building or enclosure, and the delivery of the property after having demanded the same.

Rescinding Contra

A special contract may be waived by the agreement of the parties, and a recovery may be had for the value of the work—as where the plaintiff has been prevented by the defendant from performing the work, he may recover. Part performance or delivery need not be accepted, and if not accepted, payment cannot be enforced; but if accepted, payment can be enforced for the part performed or delivered. On a special contract to

deliver a certain amount or number of anything, by a certain time, and contract is partly executed, within the time, recovery cannot be had for the part performance.

Revival.

Judgments become dormant, after five years, unless execution has issued thereon, and proceedings in court are necessary to revive the same. When the plaintiff is dead, the executor, etc., of the deceased, judgment creditor, will apply to the court for an order of revival. (See Judgment).

Sales.

Transfer of ownerships of goods and chattels, from one person to another, in consideration of the price paid, or agreed to be paid, constitutes a sale. Until such property passes from seller to buyer, by actual delivery, it is subject to execution against the seller. When a contract or agreement for specific chattel property is made, and nothing more is necessary to be done by the seller, the sale is deemed complete and perfect, and the goods are vested in the buyer, and subject to his risk, even without actual payment or formal delivery. The custom of trade largely governs such transactions, but in the absence of such, the immediate payment and delivery is implied in the sale of specific goods, and tender of the price is necessary to make the contract binding on the seller. An offer

to sell or buy by the buyer or seller, as soon as the minds of the two contracting parties meet, constitutes a contract of sale that the courts will enforce.

Signature.

Persons sometimes place their signature on a blank piece of paper, and thereby confer authority upon another to write or fill up the blank over the same with a bill or note; such will be valid and binding on the party signing such blank.

Statute of Frauds.

(See Frauds and Fraudulent Representation).

Stay of Execution.

(See Execution).

Submission to Arbitration.

All persons who have any controversy, except when possession or title to real estate is in question, may submit the same to the umpirage of any person or persons, to be mutually agreed upon, and make such submission a rule of court. They may enter into bonds to abide and perform the award; the bond to specify a time and place for the hearing. If the award is for money, and the same is not complied with, the court will enter judgment thereon, and issue execution as in other cases.

Subscription.

Where several persons subscribe to raise money for an object in which all feel an interest, the mutual promises of the subscribers form a valid consideration for the promise of each; and besides, if the work be done on the faith of the subscription, it then becomes the ordinary case of a promise to pay on one side, and work done in consideration thereof, on the other.

Surety.

Sureties, except such as appertain to commercial paper, are such as become responsible on official bonds, and their liability as such, is generally the amount of the defalcation, limited, only, to the amount of the bond. (See Promise to Pay the Debt of Another. See Bills and Notes. Contract).

A promise to pay the debt of another is not good unless made in writing; signed by the party making the promise. Where A has sold goods to B, and C says in writing, signed by himself, I will be responsible for the bill of goods sold by A to B, then A can collect of C; or, if C says to A, Let B have one hundred dollars, or one thousand dollar's worth of goods, and charge them to me, and I will pay for them, and A charges them to C, A can recover. It is a safe rule to follow, that unless parties asking credit for others, are willing to put their guarantee in writing, they are un-

worthy of credit, and merchants will make money by not letting goods go out of store.

Suit.

(See Actions).

Taxes.

Taxes are an incumbrance on land from the day next preceding the second Monday in April of each year. They may be paid on the twentieth day of June and December, subject to fifteen per cent. penalty if delinquent; lands liable to be sold therefor on the third Tuesday in January following. May be redeemed at any time within two years after sale.

Tender.

A tender may be made either before or after action; the result only affects the question of costs. If money is to be paid, or any other act performed on a certain day and place, the legal time of performance is the last convenient business hour of the day for transacting business. Neither party is compelled to attend during the whole of the day. Custom, in certain kinds of business, and in certain places, may regulate the time. Notes payable at banks must be paid within the usual banking hours. Tender must be unconditional, not accompanied by any demand, as for a receipt in full. If, after tender and refusal, the party concludes to accept the amount, he will be

entitled to it, and if, on demand, it is refused, the effect of the tender is destroyed.

Trade.

Contracts in constraint of trade are void. (See Contracts. Consideration).

Undertaking.

In attachment suits, when the ground of attachment is, that the defendant is a foreign corporation, or a non-resident of the county (where the action is brought), the plaintiff is not required to give a bond or undertaking; but in all other cases, whatever the grounds of attachment may be, an order of attachment will not issue, until there has been filed in the office of the justice, or clerk of court, subject to their approval, an undertaking in attachment, double in amount of the plaintiff's claim, and with one or more sureties, residents of the county.

Usury.

(See Interest. Computation).

Vendor and Vendee.

These are active and passive terms, of the same significance as assignor and assignee, mortgagor and mortgagee. So the vendor is the seller, and the vendee is the buyer. A bailor lets goods for hire, the bailee is the one who hires the goods.

Warehouseman.

Warehouses are incident to places, where goods are deposited to be shipped, prior to transportation; and the warehouseman who receives the same on deposit for him, is only liable for such injuries and losses as arise from his fault or neglect. He is bound only to take such care, and to use such diligence as men of ordinary prudence exercise under like circumstances. He is not responsible for loss by fire, robbery, or any accident, over which he has no control, or which did not arise from his own carelessness. Every person in whose name merchandise is shipped, is deemed the true owner thereof, so far as to entitle the consignee to a lien thereon, for money advanced to the shipper, or negotiable security given him by the consignee.

Wills.

Any person of full age, and sound mind and memory, and not under constraint, having any property, personal or real, or any interest therein, may give and bequeath the same to any persons, by last will and testament, lawfully executed. Must be in writing, signed at the end thereof by the party making the same, and be attested and subscribed in the presence of such party, by two or more competent witnesses, in

each others presence, who saw the testator subscribe, or heard him acknowledge the same.

Work and Labor.

When one works for another, in the absence of an especial agreement as to amount of compensation, he may recover reasonable compensation, or wages. A parent may recover for the work of his child; a minor may recover for his work; and a master may recover for the labor of his apprentice. In all engagements to labor in any mechanical, manufacturing or mining business, a day's work, when the contract is silent upon the subject, or where there is no express contract, shall consist of eight hours, and all agreements, contracts or engagements in reference to such labor, shall be so construed. All contracts, hereafter made within this State, for work to be done, or for anything to be sold by weight or measure, shall be taken and construed according to the standards adopted as the standards of this State.

No exemptions from manual work and labor less than $300.00; exemptions in household laws do not apply to claims of this kind. No minor under the age of twelve years shall be employed in any factory, work-shop, or establishment wherein the manufacture of any goods of any kind is carried on. No minor under the age of eighteen years shall be employed in any of the

places named for a longer peried than ten hours a day, and in no case shall the hours of labor exceed sixty in one week.

Year.

(See Computation of Time).

STATUTES OF LIMITATIONS.

The following Tables were the laws in force Dec. 1890, as given in each case, by the best special correspondent obtainable in every State and Territory, and can be relied upon as correct. E. W. G.

STATE OR TERRITORY.	Open Account.	Notes and Written Contracts.	Sealed Instruments.	Judgment of Court of Record.
	Years	Years	Years	Years
Alabama	3	6	10	20
Arkansas	3	5	10	10
Arizona	3	5	5	5
California	2	*4	4	5
Colorado	6	6	6	6
Connecticut	6	6	17	20
Dakota (North)	6	6	20	20
Dakota (South)	6	6	3	20
Delaware	3	6	†20	20
District of Columbia	3	3	12	12
Florida	4	5	20	20
Georgia	4	6	20	7
Idaho	‡4	2	2	6
Illinois	5	10	10	20
Indiana	6	10	20	20
Iowa	5	10	10	20
Indian Territory	3	5	10	10
Kansas	3	5	5	5
Kentucky	§5	a15	15	15
Louisiana	‖3	5	5	10
Maine	6	6	20	20
Maryland	3	3	12	12
Massachusetts	6	6	20	20
Michigan	6	6	10	¶10
Minnesota	6	6	6	10
Mississippi	3	6	6	7
Missouri	5	10	10	20

*Two years, if not in State of California.
†Longer by proof of claim.
‡Two years from time due, from each item open acct.
[a] Notes on footing of Bills of Exchange, 5 years.
§Five years, merchant and merchant; two years, merchant and consumer.
‖Ten years, if acknowledged correct.
¶Mortgages, 15 years; notes under seal, 10 years.

STATUTES OF LIMITATIONS.

STATE OR TERRITORY.	Open Account.	Notes and Written Contracts.	Sealed Instruments.	Judgments of Court of Record.
	Years	Years	Years	Years
Montana	5	8	8	10
Nebraska	4	5	5	5
Nevada	4	6	6	6
New Hampshire	6	*6	20	20
New Jersey	6	6	16	20
New Mexico	4	6	6	15
New York	6	6	20	20
North Carolina	3	3	10	10
Ohio	6	15	15	21
Oklahoma Territory	4	5	5	5
Oregon	6	6	10	10
Pennsylvania	6	6	†	5
Rhode Island	6	6	20	20
South Carolina	6	20	20	20
Tennessee	6	6	6	10
Texas	2	4	4	10
Utah	2	4	4	5
Vermont	6	6	8	8
Virginia	3	5	10	20
Washington	3	6	6	6
West Virginia	5	10	10	10
Wisconsin	6	6	20	‡20
Wyoming	4	5	5	5
Province of Ontario	5	5	30	30
Province of Quebec	6	6	20	20

*Notes secured by mortgage 20 years.

†Statute of limitation does not apply. (3.) Sealed treated as specialty.

‡ Ten, if judgment of other State.

INTEREST LAWS, AND LAWS OF GRACE ON SIGHT DRAFTS.

STATE OR TERRITORY.	Interest.	Rate Allowed by Contract.	Grace or No Grace.
	PER CENT.	PER CENT.	
Alabama	8	.....	Yes.
Arkansas	6	.....	.....
Arizona	7	.....	Yes.
California	7	.....	No.
Colorado	8	.....	Yes.
Connecticut	6	.....	Yes,
Dakota (North)	7	12	Yes.
Dakota (South)	12	.....	Yes.
Delaware	6	.....	No.
District of Columbia	6	10	No.
Florida	8	any rate.	.....
Georgia	7	8	No.
Idaho	10	18	.....
Illinois	8	.....	Yes.
Indiana	6	.....	.....
Iowa	6	8	Yes.
Indian Territory	6	10	.....
Kansas	6	10	No.
Kentucky	6	.....	Yes.
Louisiana	5	8	Yes.
Maine	6	any rate.	Yes.
Maryland	6	.....	No.
Massachusetts	6	.....	Yes.
Michigan	6	10	Yes.
Minnesota	7	10	Yes.
Mississippi	6	10	Yes.
Missouri	6	10	Yes.
Montana	unlimited.	.....	No.
Nebraska	7	10	Yes.
Nevada	7	.....	No.
New Hampshire	6	.....	Yes.
*New Jersey	6	.....	Yes.
New Mexico	6	12	No.
New York	6	.....	Yes.
North Carolina	6	8	Yes.
Ohio	6	8	Yes.
Oklahoma Territory	7	10	Yes.
Oregon	8	10	No.

*Bank drafts, no grace.

INTEREST LAWS, AND LAWS OF GRACE ON SIGHT DRAFTS.

STATE OR TERRITORY.	Interest.	Rate Allowed by Contract.	Grace or No Grace.
	PER CENT.	PER CENT.	
Pennsylvania	6	.....	No.
Rhode Island	6	.....	Yes.
South Carolina	7	8	Yes.
Tennessee	6	.....	No.
Texas	8	12	Yes.
Utah	8	.....	No.
Vermont	6	.....	Yes.
Virginia	6	.....	No.
Washington	10	any rate.	Yes.
West Virginia	6	.....	No.
Wisconsin	7	10	Yes.
Wyoming	12	.....	Yes.
Province of Ontario	6	.....	Yes.
Province of Quebec	6	.....	Yes.

INDEX.

Absence..... 5
Accident..... 5 et seq
Accommodation Acceptor..... 6 et seq
Accommodation Indorser..... 7
Accommodation Paper..... 8
Account Stated..... 8
Acknowledgement of Service of Process..... 9
Acknowledgement of Deeds and Wills..... 38 et seq
Actions..... 9
Administration of Estates..... 9 et seq
Affidavit..... 10 et seq
Agent..... 12 et seq
Agreement..... 13 et seq
Appeals..... 14 et seq
Appearance to the Action..... 15
Arrest on Civil Process before Judgment..... 15
Arrest on Civil Process after Judgment..... 16
Assignment of a Claim..... 16
Assignment for Benefit of Creditors..... 16 et seq
Attachment..... 17 et seq
Attested Account..... 18

Bail..... 18
Bill of Costs..... 18 et seq
Bill of Sale..... 19
Bills and Notes..... 19 et seq
Bond..... 21 et seq
Book Account..... 22
Burden of Proof..... 22

Care..... 22 et seq
Carriers of Goods..... 23 et seq
Chattle Mortgages..... 91 et seq
Choses in Action..... 24 et seq
Claimant of Property taken on Execution..... 25 et seq

Cognovit or Judgment Note..... 26
Collateral Security..... 26 et seq
Composition with Creditors..... 57 et seq
Compound Interest..... 28 et seq
Computation of Interest..... 29 et seq
Computation of Time..... 31
Conditional Sales..... 32 et seq
Confession of Judgment..... 33 et seq
Consideration..... 34 et seq
Consignment..... 35
Consignor and Consignee..... 35 et seq
Constructive Notice..... 36
Continuance..... 36 et seq
Contract..... 37 et seq
Conveyance..... 38 et seq
Commercial Paper..... 40
Corporations..... 40 et seq
Courts..... 42 et seq
Costs..... 43

Date..... 43 et seq
Days of Grace..... 44
Demand..... 44
Depositions..... 44 et seq
Descent and Distribution..... 45 et seq
Divorce..... 48 et seq
Dormant Judgment..... 50
Dormant Partner..... 51
Driving..... 51 et seq

Embezzlement..... 52 et seq
Evidence..... 53 et seq
Execution..... 56 et seq
Exemptions..... 57 et seq
Exempt Insurance Money..... 59
Express and Implied Contracts..... 59

False Pretense..... 59 et seq
Fees for Incorporating..... 42
Forcible Entry and Detention..... 60 et seq
Forgery..... 61 et seq
Frauds and Fraudulent Representations..... 62 et seq
Frauds of Owners on Consignees..... 63
Frauds..... 63 et seq
Frauds and Perjurys, Statute of..... 64 et seq

Garnishee..... 65 et seq
Grace..... 66 et seq
Guarantor and Guarantee..... 67

Hotels..... 70 et seq
Husband and Wife..... 67 et seq

Ignorance..... 73
Illegal Considerations..... 72 et seq
Illegal Contracts..... 73
Implied Promise..... 73
Inducement..... 73
Insolvent Debtor..... 73 et seq
Installments, how Interest to be Computed..... 74 et seq
Insurance..... 75
Interest..... 75 et seq
Inventory..... 76
Irregularity..... 76
Interest Laws and Grace on Sight Drafts.....118 et seq

Judgments..... 76 et seq
Jurisdiction of Justice of the Peace..... 77 et seq

Landlord and Tenant..... 78
Lease..... 78 et seq
Letters..... 79 et seq
Licenses..... 80
Liens, upon Water-Craft, Buildings, Bridges, etc. 80 et seq
Lien, upon Mines for Labor..... 81 et seq
Lien, Leasehold..... 82
Lien, Penalty for wrongful use of Material Purchased by Contractor..... 82 et seq
Lien, upon Contiguous Lots or Separate Buildings..... 83
Lien, Action..... 83 et seq
Lien, Who is Owner or Proprietor..... 84
Lien, Filing of..... 84 et seq
Lien, of Sub-Contractors upon Payments due Head-Contractor; How Obtained; Filing of Statetement of Account, etc..... 85 et seq
Lien, Payments to be retained on Receipt of Notice..... 86 et seq
Lien, When and How Sub-Contractor may obtain Lien on the Property of the Owner; Date of Lien..... 87 et seq
Limitation of Actions..... 88 et seq

Mail 89
Malicious Prosecution 89
Married Women 89
Master and Servant 89
Minor 90
Misrepresentation 90
Mistake 90
Mortgage 91
Mortgages, Chattel ..... 91 et seq
Mechanics Lien 94

Necessaries ..... 94 et seq
Negligence 95
Negotiable Instruments 95
Non Resident ..... 95 et seq
Note 96
Notice 96
Notice to Vacate 96

Obtaining Property or Signature by False Pretense ..... 96 et seq
Ownership of Property 97

Parties to Action ..... 97 et seq
Partner and Partnership ..... 98 et seq
Part Performance 102
Payments, How Applied 102
Penalty of a Bond ..... 102 et seq
Postal Rules 103
Power of Attorney 103
Principal 12
Promissory Note 103
Proof of Claim 103
Property Statements 104

Receipt 104
Redemption ..... 104 et seq
Replevin ..... 105 et seq
Rescinding Contract 107
Revival 108

Sales ..... 108 et seq
Signature 109
Statute of Frauds 109
Stay of Execution 109
Submission to Arbitration 109
Subscription 110

Surety ..... 110 et seq
Suit 111
Statute of Limitation Table ..... 116 et seq
Taxes 111
Tender ..... 111 et seq
Trade 112
Undertaking 112
Usury 112
Vendor and Vendee 112
Warehouseman 113
Wills ..... 113 et seq
Work and Labor ..... 114 et seq
Year 115

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